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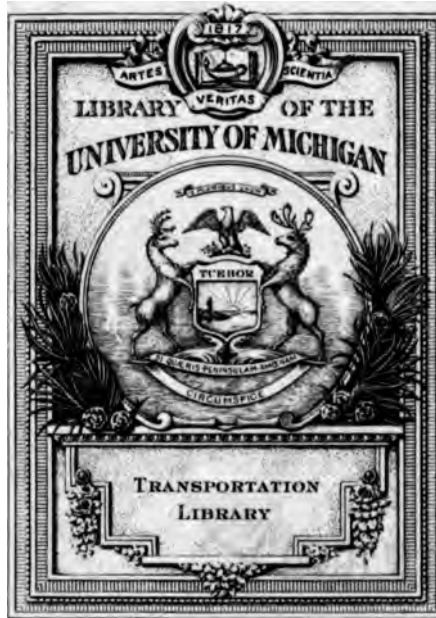
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# INTERSTATE COMMERCE REPORTS.

## VOLUME VI.

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### DECISIONS

OF THE

### INTERSTATE COMMERCE COMMISSION

OF THE

### UNITED STATES.

AUGUST 15, 1893, TO AUGUST 21, 1896.

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## **Interstate Commerce Commission.**

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**HON. JAMES D. YEOMANS, OF IOWA, from May 2, 1894.**

**EDWARD A. MOSELEY, *Secretary.***



THE BOARD OF TRADE OF TROY, ALABAMA, V. THE ALABAMA MIDLAND RAILWAY COMPANY; THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, AND H. M. COMER AND OTHERS, THE RECEIVERS THEREOF; THE SAVANNAH, FLORIDA, & WESTERN RAILWAY COMPANY; THE KANSAS CITY, FORT SCOTT, & GULF RAILROAD COMPANY; THE KANSAS CITY, MEMPHIS, & BIRMINGHAM RAILROAD COMPANY; THE LOUISVILLE & NASHVILLE RAILROAD COMPANY; THE MOBILE & OHIO RAILROAD COMPANY; THE EAST TENNESSEE, VIRGINIA, & GEORGIA RAILWAY COMPANY; THE WESTERN RAILWAY OF ALABAMA; THE MISSOURI PACIFIC RAILWAY COMPANY; THE WABASH RAILROAD COMPANY; THE SIOUX CITY & PACIFIC RAILROAD COMPANY; THE CINCINNATI, NEW ORLEANS, & TEXAS PACIFIC RAILWAY COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE EVANSVILLE & TERRE HAUTE RAILROAD COMPANY; THE JEFFERSONVILLE, MADISON, & INDIANAPOLIS RAILROAD COMPANY; THE LOUISVILLE, NEW ALBANY, & CHICAGO RAILWAY COMPANY; THE CLYDE STEAMSHIP COMPANY; THE OCEAN STEAMSHIP COMPANY OF SAVANNAH; THE PROVIDENCE & STONINGTON STEAMSHIP COMPANY; THE NEW YORK & TEXAS STEAMSHIP COMPANY; THE METROPOLITAN STEAMSHIP COMPANY; THE CITIZENS' STEAMBOAT COMPANY; THE HARTFORD & NEW YORK TRANSPORTATION COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE NEW HAVEN STEAMBOAT COMPANY; THE PEOPLE'S LINE STEAMERS; THE MAINE STEAMSHIP COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE CENTRAL VERMONT RAILROAD COMPANY; THE BRIDGEPORT STEAMBOAT COMPANY; THE

NORWICH & NEW YORK TRANSPORTATION COMPANY; THE CANADIAN PACIFIC RAILWAY COMPANY; THE MINNEAPOLIS, ST. PAUL, & SAULT STE MARIE RAILWAY COMPANY; THE HOUSATONIC RAILROAD COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE BOSTON & ALBANY RAILROAD COMPANY; THE BOSTON & MAINE RAILROAD COMPANY; THE NEW YORK & NEW ENGLAND RAILROAD COMPANY; THE OLD COLONY RAILROAD COMPANY; THE FITCHBURG RAILROAD COMPANY; THE MAINE CENTRAL RAILROAD COMPANY; THE CONNECTICUT RIVER RAILROAD COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE PROVIDENCE & SPRINGFIELD RAILROAD COMPANY; THE CHESHIRE RAILROAD COMPANY; THE CONCORD & MONTREAL RAILROAD COMPANY.

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Complaint filed June 29, 1892.—Answers filed July 15 to August 31, 1892.—  
Heard at Troy, Ala., Nov. 11, 1892.—Briefs filed March 7 to May 1, 1893.  
—Decided August 15, 1893.

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1. The fact that the property and affairs of a carrier have been placed by a United States court in the hands of a receiver does not affect the jurisdiction of this Commission under a complaint charging such carrier with violations of the Act to regulate commerce.
2. The continuity of the carriage of freight over a line formed by two or more roads is not broken *in fact*, and cannot be broken in law, by the charge of a local rate by one (or more) of such roads as its proportion of the through rate.
3. The successive receipt and forwarding in ordinary course of business by two or more carriers of interstate traffic shipped under through bills for continuous carriage over their lines, is assent to a "common arrangement" for such carriage within the meaning of the Act to regulate commerce without previous express agreement between them, and the obligations imposed by the statute cannot be evaded by the demand of the local

charge for the haul over its own road by one or more of such carriers, or by the declaration on the part of one or more of said carriers that as to the transportation over its road it is a local, and not a through, carrier. (Reaffirming the doctrine laid down in *Georgia R. Com. v. Clyde SS. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324.)

4. A local rate, which presumably is adopted as covering both the initial and final expense of a local haul, is *prima facie* excessive as part of a through rate over a through line composed of two or more carriers.
5. Where a proportion of a through rate for part of a through haul is greatly disproportionate to the balance of the through rate, the knowledge of the circumstances and conditions (if any) justifying such disproportionate rate being peculiarly in the possession of the carrier, the burden is on the carrier to make proof of such justifying circumstances and conditions.
6. The fact that one city is much larger and has more important and extensive business interests than another, and has been treated by the carriers in making rates to surrounding points as a "trade center," is no justification for a continuation of discriminatory rates in favor of such city. The object of the Act to regulate commerce was to eradicate the existing system of rebates and unjust discriminations in favor of particular localities, special enterprises, and favored individuals.
7. Unjust discrimination as between localities or individuals cannot, in the nature of things, be essential to the business prosperity of the carrier, and it is no valid objection to the correction of unlawful rates to one point that it involves a like correction as to other points.

*W. C. Oates*, for complainant.

*A. A. Wiley*, for the Alabama Midland Railway Company and the Savannah, Florida & Western Railway Company.

*E. L. Russell*, for the Mobile & Ohio Railroad Company.

#### REPORT AND OPINION OF THE COMMISSION.

*CLEMENTS, Commissioner:*

The complainant, the "Board of Trade of Troy," is an association of citizens of Troy, Alabama, organized for the promotion of the business interests of that city. The defendants (hereinafter named) form several through lines between the points mentioned in the complaints, and, as members of such lines, are engaged in interstate commerce, wholly by rail or partly by rail and partly by water. The Alabama Midland Railway Company, and the Central Railroad & Banking



Company of Georgia, reach Troy directly and are the initial carriers in all the lines from that point. These two roads for brevity are hereafter designated, respectively, as the Alabama Midland and the Georgia Central.

The general ground of complaint is, in substance, that Troy, being in active competition for business with Montgomery and Columbus, the lines of defendants to Troy and those cities unjustly discriminate in their rates against the former, and give the latter an undue preference or advantage in respect to certain commodities and classes of traffic. The specific charges insisted on at the hearing and to which the testimony relates are:

1. That the Alabama Midland and the defendant roads connecting and forming lines with it from Baltimore, New York and the east to Troy and Montgomery, charge and collect a higher rate on shipments of class goods from those cities to Troy than on such shipments through Troy to Montgomery, the latter being the longer distance point by 52 miles.

2. That the "Alabama Midland and the Georgia Central and their connections unjustly discriminate against Troy and in favor of Montgomery" in charging and collecting \$3.22 per ton to Troy on phosphate rock shipped from the South Carolina and Florida fields, and only \$3 per ton on such shipments to Montgomery, the longer distance point by both said roads, and that all phosphate rock carried from said fields to Montgomery over the road of the Alabama Midland has to be hauled through Troy.

3. That the rates on cotton established by said two roads and their connections on shipments to the Atlantic seaports, Brunswick, Savannah and Charleston, unjustly discriminate against Troy and in favor of Montgomery, in that the rate per hundred pounds from Troy is 47 cts. and that from Montgomery, the longer distance point, is only 40 cts., and that such shipments from Montgomery over the road of the Alabama Midland have to pass through Troy.

4. That on shipments for *export* from Montgomery and other points within what is termed in the complaint "the

jurisdiction" of the Southern Railway & Steamship Association to the Atlantic seaports, Brunswick, Savannah, Charleston, West Point and Norfolk, a lower rate is charged than the regular published tariff rate to such seaports, in that Montgomery and such other points are allowed by the rules of said Association to ship through to Liverpool *via* any of those seaports at the lowest through rate *via* any one of them on the day of shipment, which may be much less than the sum of the regular published rail rate, and the ocean rate *via* the port of shipment; that this reduction is taken from the published tariff rail rate to the port of shipment; and that this privilege being denied to Troy is an unjust discrimination against Troy in favor of Montgomery and such other favored cities, and that it is also a discrimination against shipments which terminate at such seaport in favor of shipments for *export*.

5. That Troy is unjustly discriminated against in being charged on shipments of cotton *via* Montgomery to New Orleans the full local rate to Montgomery by both the Alabama Midland and the Georgia Central.

6. That the rates on "class" goods from western and north-western points established by the defendants, forming lines from those points to Troy, are relatively unjust and discriminatory as against Troy when compared with the rates over such lines to Montgomery and Columbus.

Answers to the complaint have been filed in behalf of the Alabama Midland; the Georgia Central; the Louisville & Nashville Railroad Company; the Savannah, Florida & Western Railway Company; the Western Railway of Alabama; the Louisville, New Albany & Chicago Railway Company; the Illinois Central Railroad Company; the Mobile & Ohio Railroad Company; the Kansas City, Memphis & Birmingham Railroad Company; the Kansas City, Fort Scott & Memphis Railroad Company; the Pennsylvania Railroad Company; the Philadelphia & Reading Railroad Company; the New York & New England Railroad Company; the Providence & Springfield Railroad Company; the Central Railroad Company of New Jersey; the Maine Central Railroad Company;

the Boston & Maine Railroad Company; the Metropolitan Steamship Company; the Connecticut River Railroad Company; the Providence & Stonington Steamship Company; the Fitchburg Railroad Company; the Concord & Montreal Railroad Company; and the Canadian Pacific Railway Company.

A few of the respondents deny all participation in traffic or through rates from or to Troy; some allege that their proportion of any through rates from or to Troy is their local charge over their own roads or a fixed amount, which remains the same no matter what may be the point of origin or destination of the traffic, and hence that they cannot be guilty of discrimination as against Troy or any other locality; and others contend that although they receive a proportion of through rates on through shipments over their roads between the points named in the complaint, yet they are not "under a common control, management or arrangement for continuous carriage" with the other members of the through lines. These matters of defense may be disposed of before entering upon the discussion of the other and more material issues raised by the pleadings. Those of the defendants who, it may appear, do not participate in the traffic or rates in question are not amenable to, and cannot be affected by, any order which the Commission may make in this case. The fact that a carrier's proportion of a through rate is its local for the haul over its own road or is a fixed amount, which remains the same for all points of origin or destination of traffic reached by the through line, cannot relieve it from joint responsibility as a component of the through line, if the entire rate be violative of the law. In the case of the *Georgia R. Com. v. Clyde SS. Co.*, 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324, it is said: "The total rate or charge for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate or charge is made is only material as bearing upon the legality of the aggregate charge, and how any reduction ordered may be accomplished, whether by lowering locals or proportions, is

matter for the carriers to determine among themselves;" and again: "Where two or more roads forming a continuous connecting line between points in different states bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the Act to regulate commerce by declaring that as to such traffic it is a local carrier." See also *James & Mayer Buggy Co. v. Cincinnati, N. O. & T. P. Ry. Co.*, 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744. Goods cease to be a part of the general mass of property in a state when they have been shipped or entered with a common carrier for transportation to another state. *Coe v. Errol*, 116 U. S. 517, 29 L. ed. 715; *Kidd v. Pearson*, 128 U. S. 1, 32 L. ed. 346. From that time until they reach their destination and "become incorporated and mixed up with the mass of property" in the state where delivered, they are subjects of interstate commerce (*Leisy v. Hardin*, 3 Inters. Com. Rep. 36, 135 U. S. 110, 34 L. ed. 132), and the rates charged for their carriage are within the regulating power of this Commission under the Interstate Commerce Law. By § 7 of that law, it is made unlawful for carriers subject to that Act "to enter into any combination, contract, or agreement, express or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination," and that "no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose, and without any intention to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act." The continuity of the haul is not broken in fact and cannot be broken in law by one or more carriers, members of a through line, charging local rates as their proportion of a through rate. If the continuity of the carriage may not be thus interrupted, can the exaction of local rates exempt the carrier from liability under the law by placing him in the attitude of a strictly local

carrier, operating under no "common control, management or arrangement" with the other carriers participating in the through haul? If this be conceded, the most vital provisions of the law may be readily evaded and nullified. For instance, a terminal carrier, part of a continuous through line, could elect to charge on through traffic its local to one or any number of stations on its road and a less through rate to stations beyond, and no violation of law could be alleged because as to the short haul the carrier would not be subject to the Act. The charge of a local rate and declaration by a carrier that as to through transportation to certain points on its road it is a local carrier *cannot alter the fact*. The law regards the substance of things, and a palpable device for evasion of the law will not be allowed to accomplish its purpose. The facts, that the carriage is continuous, that the traffic is through interstate traffic, and that the carrier in due and ordinary course of business accepts and forwards it, are sufficient to establish responsibility under the law. As is said in the case of *Georgia R. Com. v. Clyde SS. Co.*, 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324: "The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment, and *previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.*"

The answer of the Georgia Central sets forth, among other things, that it is in the hands of a receiver, H. M. Comer, appointed "by order of the United States Court for the Eastern Division of the Southern District of Georgia," and that the receiver, "being an officer of the United States court, and subject only to its order, is not subject to the jurisdiction of this Commission in the premises." The main purpose of a receivership is to preserve property in controversy *pendente lite*, and this devolves upon the court appointing the receiver the duty of protecting the possession of the property in his hands. It is a general rule, therefore, that before suit is brought against a receiver, leave of the court by which he was appointed must be obtained. "This rule is necessary to prevent one creditor from obtaining undue

advantage over others in the enforcement of his claim; otherwise courts outside the jurisdiction of the court which appointed the receiver might proceed to judgment and sell the property within their reach under execution, and the appointing court would be powerless to prevent the injustice." *Beach, Receivers*, §§ 652, 655; *Barton v. Barbour*, 104 U. S. 126, 26 L. ed. 672. Complaints before this Commission do not fall within the reason of the rule requiring consent of the court appointing a receiver to be obtained before bringing suit. The main object of such complaints is the regulation or readjustment of rates alleged to be illegal because unjustly discriminative or unreasonable in themselves, and reparation for injury sustained by reason of such illegality; and the order of the Commission for reparation or other relief, if not voluntarily obeyed by the carriers, can only be enforced by suit in the proper court. The Commission renders no judgment upon which execution can issue and be levied on property in the hands of a receiver. The question whether property in the possession of a receiver can be made subject to an order of reparation issued by us would arise on proceedings in the courts for the enforcement of such order. *Loud v. South Carolina R. Co.*, 4 Inters. Com. Rep. 205, 5 I. C. C. Rep. 529. No order of reparation is asked in the present case. It appears, moreover, that by Act of Congress of March 3, 1887 (U. S. Stat. 1886-87, p. 552), receivers appointed by United States courts may be sued "without the previous leave of the court in which such receiver was appointed."

The answers of the defendants who admit participation in, and responsibility for, the rates complained of, deny that those rates are unlawful or violative of any of the provisions of the Act to regulate commerce, the main ground upon which they are sought to be justified being that the circumstances and conditions attending transportation to Troy are not substantially similar to those attending transportation to Montgomery and Columbus because of water and rail competition at the latter points.

#### FACTS AND CONCLUSIONS.

Troy is situated at the intersection of the roads of the Alabama Midland and the Georgia Central companies

Montgomery is at the terminus of the Alabama Midland, fifty-two miles northwest of Troy, and shipments to Montgomery over that road from New York, Baltimore and northeastern cities, and from the Atlantic seaports, Brunswick, Savannah, Charleston, West Point and Norfolk, and from Port Royal, S. C., and Gainesville, Ocala and Tampa, Florida, pass through Troy.

The Savannah, Florida & Western Railway and the Ocean Steamship Company, and the Savannah, Florida & Western Railway and Merchants' & Miners' Transportation Company, form, with the Alabama Midland Railway, two through lines, the former from New York and the latter from Baltimore, over which traffic is carried on through rates and through bills of lading to Troy and through Troy to Montgomery. The Georgia Central forms through lines in connection with the Ocean Steamship Company and Merchants' & Miners' Transportation Company to Troy and Montgomery from New York and Baltimore. The class rates in cents per hundred pounds, except Class F, which is per bbl., over the above lines (sea and rail) from New York and Baltimore to Troy and Montgomery, respectively, are as follows :

## SEA AND RAIL.

Class.	From New York.		From Baltimore.	
	To Montgomery.	To Troy.	To Montgomery.	To Troy.
1	114	136	106	129
2	98	117	90	111
3	86	103	83	98
4	78	89	70	84
5	60	74	57	70
6	49	61	46	58
A	36		33	
B	48		45	
C	40		37	
D	39		36	
E	58		55	
H	68		72	
F (per bbl.)	78		65	

There are also published "all rail" rates *via* the "Great Southern Despatch" line from New York and Baltimore to Troy and Montgomery. On this line traffic is carried from

New York to Harrisburg over the Pennsylvania road, from Harrisburg to Hagerstown over the Cumberland Valley road, from Hagerstown to Bristol over the Norfolk & Western, and from Bristol to Chattanooga over the East Tennessee, Virginia & Georgia road. From Chattanooga the principal routes or lines to Troy and Montgomery appear to be (1), to Atlanta over the East Tennessee, Virginia & Georgia road, from Atlanta to Montgomery over the Western Railway of Alabama, and from Montgomery to Troy over either the Alabama Midland or the Georgia Central; (2), to Birmingham over the Alabama Great Southern road, from Birmingham to Montgomery over the Louisville & Nashville road, and from Montgomery to Troy over the two roads named in route 1 above; (3), to Calera over the East Tennessee, Virginia & Georgia road, from Calera to Montgomery over the Louisville & Nashville road, and from Montgomery to Troy over the two roads named in route 1 above; and (4), over the line of the Georgia Central *via* Macon and Columbus to Troy and Montgomery.

The class rates in cents per hundred pounds (except Class F, which is per bbl.) over the above-described "all rail" lines to Troy and Montgomery from New York and Baltimore are as follows:

## ALL RAIL.

Class.	From New York.		From Baltimore.	
	To Montgomery.	To Troy.	To Montgomery.	To Troy.
1	114	144	106	136
2	98	128	90	115
3	86	108	83	105
4	78	98	70	90
5	60	77	57	74
6	49	68	46	60
A	36		33	
B	48		45	
C	40		37	
D	39		36	
E	58		55	
H	68		65	
F (per bbl.)	78		73	

It appears that shipments of phosphate rock are made *via* the Alabama Midland, as the terminal road, to Troy and



Mobile & Ohio road; (4), from Troy *via* Columbus to Chattanooga over the line of the Georgia Central, and from Chattanooga to Cincinnati over the Cincinnati, New Orleans & Texas Pacific road; (5), from Troy *via* Columbus to Chattanooga over the Georgia Central, from Chattanooga to Burgin, Ky., over the Cincinnati, New Orleans & Texas Pacific road and from Burgin to Louisville over the Louisville Southern Railroad; (6), from Troy *via* Columbus to Chattanooga over the line of the Georgia Central, and thence over the Nashville, Chattanooga & St. Louis and the Missouri Pacific railways to St. Louis. The first three of these routes are *via* Montgomery and the last three *via* Columbus.

None of the traffic involved in this case is carried by the Georgia Central either through Troy to Montgomery or through Montgomery to Troy. Its Mobile & Girard line runs in a southwesterly direction from Columbus to and through Troy towards Mobile (intersecting at Troy, as before stated, the Alabama Midland) and its Montgomery & Eufaula line runs in a direction a little north of west from Eufaula to Montgomery. These two lines (the Mobile & Girard and the Montgomery & Eufaula) cross each other at Union Springs, Ala., thirty-one miles from Troy and forty from Montgomery, and traffic from or to Troy over the lines of the Georgia Central is carried *via* Union Springs. Traffic for Montgomery coming *via* Columbus or Eufaula over these lines does not pass through Troy, and no departure, therefore, from the "long and short haul rule" of the 4th section of the statute, as against Troy as the shorter distance point and in favor of Montgomery as the longer distance point, appears to be chargeable to the Georgia Central. Shipments consigned to Troy *via* Columbus or Montgomery, the latter cities being as to such shipments the shorter distance points, can raise no question of a departure from the rule as against Troy.

But as to the Alabama Midland and its connections constituting through lines, the case is different. Interstate traffic is carried over that road to Troy and through Troy on to Montgomery, and in the opposite direction, from Troy, and from Montgomery through Troy, the haul to and from Montgomery being 52 miles greater; and in respect to this traffic

the proof shows departures from the rule of the statute, (1), as to class goods shipped from New York, Baltimore and the east; (2), as to phosphate rock, shipped from Port Royal and Charleston, South Carolina, and Gainesville and other points of origin of such shipments in Florida; and (3), as to cotton shipped from Troy and from Montgomery to the Atlantic seaports, Brunswick, Savannah, Charleston, West Point and Norfolk. As will be seen from the tables given above, the "sea and rail" rates on class goods from Baltimore to Troy range from 12 cts. per hundred pounds on *Class 6* to 23 cts. on *Class 1* higher than those on such goods shipped through Troy to Montgomery, and from New York to Troy, from 12 cts. to 22 cts., and the "all rail" rates from Baltimore and New York to Troy, from 14 cts. to 30 cts. These class rates are applied to sugar and coffee, which are the heavy goods mostly shipped to Troy from the east, and also to dry goods, notions, and many other commodities. The rate on phosphate rock from Port Royal, Charleston, and Gainesville to Troy is 22 cts. per ton higher than that on such rock shipped through Troy to Montgomery, and on cotton the rate from Troy to the seaports, Brunswick and Savannah, is 2 cts. per hundred pounds and to Charleston 7 cts. per hundred higher than that from Montgomery *via* Troy.

Where substantial dissimilarity of circumstances and conditions is set up by defendant carriers in justification of departures from the "long and short haul" rule of the statute, the burden is upon them to establish such dissimilarity. *Re Louisville & N. R. Co.* 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31; *Spartanburg Board of Trade v. Richmond & D. R. Co.* 2 Inters. Com. Rep. 193, 2 I. C. C. Rep. 304. Water competition at Montgomery *via* the Alabama river is adduced as a justification in the answer of the Alabama Midland and by some of the other defendants. In the case of *Re Louisville & N. R. Co.*, *supra*, it was held that "actual" water competition "of controlling force in respect to traffic important in amount" may constitute the dissimilar circumstances and conditions authorizing a departure from the general rule of the statute. In the case of *Harwell v. Columbus & W. R. Co.*, 1 Inters. Com. Rep. 631, 1 I. C. C. Rep. 236, the complaint alleged unjust

None of the traffic involved in this case is carried by the Chicago Channel either through Troy to Montgomery or through Montgomery to Troy. The Mobile & Girard line runs in a northwesterly direction from Columbus to and through Troy towards Mobile terminating at Troy, as before stated the Alabama Railway and its Montgomery & Florida line runs in a direction a little west of west from Florida to Montgomery. These two lines, the Mobile & Girard and the Montgomery & Florida, cross each other at Iron Springs, Ala. thirty-one miles from Troy and fifty-four from Montgomery, and neither line is at Troy over the line to the Chicago Channel is carried to Iron Springs. Traffic for Montgomery running via Columbus to Mobile via these lines does not pass through Troy nor do shipments directed from the "City and State" and all other points of the country to southern Troy or at which shipments will run to Troy or Montgomery as the regular Atlantic route passes to Montgomery to the Gulf of Mexico. Shipments composed to Troy via Columbus or Birmingham at this time being so it was suggested the route would follow the way to Columbus & a departure from it was suggested.

一、政治思想：具有坚定的政治立场，拥护党的路线、方针、政策，具有较高的政治觉悟和理论水平。

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discrimination against Opelika and in favor of Montgomery and Columbus. Water competition at Montgomery *via* the Alabama river was (as in the present case) set up by way of justification. This defense was not sustained, and the Commission, in overruling it, said: "The mere fact that a point is situated upon a navigable stream does not of itself justify the lesser charge for the longer haul to such point," and that, in order to justify such lesser charge, the water competition must "*control the carriage of the traffic on which the discrimination is made.*" In that case it is further said: "The Commission is aware that an independent and active line of steamers connects Montgomery with the Atlantic seaboard at Mobile," but that the fact "without more," that the "railroads have water competition and are compelled to meet it," is not held to be "sufficient to justify the lesser charge for the longer distance." Conceding that there is a line of boats running between Montgomery and Mobile (of which fact, however, there is no proof in this case), that alone would not be sufficient to justify the greater charge to Troy than to Montgomery. At the conclusion of the taking of the testimony, it was agreed between counsel that "each side should, within two weeks from the date of the taking of the testimony, file an affidavit with the Commission setting forth the *volume of* business of Troy and Montgomery, respectively, and *also the number of inhabitants of each.*" In the affidavit filed by counsel for the defendants is a statement that "*the business on the Alabama river,*" according to the report of the United States engineer, for the year 1891, was 52,349 bales of cotton carried by boat and 44,500 tons of other freight." This statement is outside the agreement, but, aside from that fact, it purports to give the entire cotton and other business on the river for the year named without stating the point or points at which it originated, or the direction in which it was moved. How much of it went from Montgomery or points above or below Montgomery *down* the river towards Mobile, or from Mobile and points above that city *up* the river to Montgomery does not appear. As showing water competition of controlling force at Montgomery on traffic to that city from New York, Baltimore and other northeastern cities, or from the South Carolina and Florida phosphate beds, or from

Montgomery to the Atlantic seaports, Brunswick, Charleston and Savannah, the statement is valueless. (This is true, also, as to the traffic from St. Louis and from Louisville, Cincinnati and other Ohio river points, hereinafter to be considered.) There are regular lines of ocean steamers from those ports to New York, Baltimore and other cities on the northeast coast, but there does not appear to be such lines from Mobile, either to those cities or to any foreign port. The only witness questioned by counsel for the defendants as to the effect of water competition at Montgomery on shipments of cotton to the Atlantic ports testified that "the river competition plays no great part." An attempt was made to show that some shipments of phosphate rock had been made from the Florida points, Ocala and Tampa (the latter on the Gulf coast), *via* Mobile and the Alabama river to Montgomery, but the witness testified that he had never known such shipments to be made, that he himself had "tried to get a rate by that line to Montgomery and had been unable to get it," and that he thought it impracticable as "the goods would have to be transferred at Mobile to get to Montgomery and then would have to be hauled to the works." No attempt is made to establish substantial dissimilarity of circumstances and conditions at Montgomery on the ground of rail competition further than by proof of the fact that there are a number of railway lines running to and through that city connecting with different parts of the country. This alone, it is scarcely necessary to say, is not sufficient. *Re Louisville & N. R. Co.* 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31.

Our conclusion is that no justification has been shown for the departures, complained of and established by the proof, from the general rule of the 4th section of the Act to regulate commerce.

The evidence also sustains the allegation of the complaint that on shipments for export to the Atlantic ports, Brunswick, Savannah, West Point and Norfolk, from Montgomery and other localities within what is termed in the complaint "the jurisdiction" of the Southern Railway & Steamship Association, Montgomery and such other points are allowed, under the rules of that Association, to ship through to Liverpool

*via* any one of those ports at the lowest through rate *via* any of them at the date of shipment—in other words, at the lowest combination of inland and ocean rates from the interior point to the foreign market. This may result in a less through rate than the sum of the regular published tariff rail rate to the port of transshipment and the ocean rate thence. For example, if at the date of shipment the regular rail rate to Savannah be 40 cts. and the ocean rate from that port to Liverpool 53 cts., making a through rate of 93 cts., and the rail rate to Norfolk be 45 cts., and the ocean rate from that port to Liverpool 35 cts., making a through rate of 80 cts., Montgomery is allowed on a shipment *via* Savannah the latter rate of 80 cts., or 13 cts. less than the sum of the regular inland rate to that port and the ocean rate on. This 13 cts. is taken from the published inland rail rate to Savannah and not from the ocean rate. This privilege is denied to Troy, and the result is that on two shipments to Savannah for export made the same day, the one from Montgomery (the longer distance point both over the Alabama Midland and the Georgia Central) and the other from Troy, the rate charged the Troy shipper is 45 cts., and that charged the Montgomery shipper is only 32 cts. This discrimination would also exist between a shipment from any interior point consigned to the domestic port and one for export consigned to a foreign market.

The question, whether the making of export rates through the port of New York of which the inland proportion accepted by the carriers was less (often 10 cts. or more per hundred pounds) than the published tariff rates charged on like traffic at the same time from interior points to the same port as its final destination was unlawful as being an unjust discrimination against the latter, was presented to the Commission in the case of *New York Produce Exch. v. New York Cent. & H. R. R. Co.*, 2 Inters. Com. Rep. 553, 3 I. C. C. Rep. 138. The Commission decided that the difference made by the carriers between the proportion of the through rate from interior points to New York on export traffic consigned to foreign countries and the rate charged contemporaneously on the like kind of traffic from the same interior points consigned to New York, "was not shown to be justified by any circumstances tending

to show that it was just and proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at that port." It was further held that under the amendment of March 2, 1889, to the Act to regulate commerce, requiring ten days' previous notice of advances and three days' previous notice of reduction in rates, they cannot be varied from day to day, or oftener, to meet fluctuations in ocean rates, and that the only practicable mode yet devised for making through export rates is to add to the established inland rates from the interior to the seaboard the current ocean rates. On the 23d of March, 1889, the Commission issued a general order in reference to publication under the amendment of March 2, 1889, of advances and reductions in joint rates and fares, in which, among other things, it was stated that tariffs, whether joint or individual, for merchandise billed or intended for export by sea were subject to the requirement of notice of any change therein, the same as in the case of other tariffs. After the publication of this order, a hearing was had before the Commission at the request of a large number of interstate carriers south of the Potomac and Ohio rivers, as to the application of this order to export traffic through our Atlantic and Gulf ports from the Chesapeake Bay to those in Texas. At this hearing it was insisted, in substance, that the vessel service at the Trunk Line ports being ample, no material difficulty was found in the transportation of exports to them at established tariff rates, but that, on account of the scarcity of sea-going vessels at these southern ports and the consequent absence of competition, vessels at the latter were able to a larger extent to exact terms to suit themselves, and this resulted in great fluctuations in ocean rates affecting the stability of the inland proportions of the through rates. These and other matters were presented as justifying the exemption in respect to export rates of these carriers from the order as to publication of notice of advances and reductions and from the general rule requiring the inland proportion of a through export rate to be not less than the rate on domestic traffic to the same point. It is said in our Third Annual Report, that "in consequence of these conditions, a method came into use, and has since prevailed over a large number of the southern



states, of an export rate made every day to be in force as to the export rates for the succeeding twenty-four hours, based on the vessel facilities in the southern ports and their ocean rates, and *on the lowest combination of the inland and ocean rates*, from the interior point of shipment to the foreign market, the through rate thus made having no reference to the established inland rate for consignment at the seaboard." In view of the matters set forth and proved by the southern carriers, and of the fact that the Commission had intimated in reference to the export rate *via* the port of Boston (*Re Export Trade of Boston*, 1 Inters. Com. Rep. 25, 1 I. C. C. Rep. 24) that there might be substantially different circumstances and conditions affecting export traffic in different parts of the country, the Commission, while not expressly sanctioning this method of making export rates through the southern ports, forbore to condemn it, and held the question presented for further investigation and consideration. In the same report the Commission also stated that it expressed no opinion on the subject, but deemed it proper to lay before Congress the substance of the evidence taken at the hearing granted the southern carriers. Third Annual Report, pp. 64-69.

The main cause of complaint on the part of Troy, however, in connection with this system of making export rates, as disclosed by the evidence, is, that while its benefits are given by the roads composing the Southern Railway & Steamship Association to Montgomery and other favored localities on their lines, they are denied to Troy, and it is contended that this is an unjust discrimination against Troy. This contention is apart from and independent of the question whether the system is itself lawful and justified as applied to Montgomery and other points. If it be lawful in itself, it cannot lawfully be so applied as to unduly favor one locality, to the prejudice of another. Both the Alabama Midland and the Georgia Central are members of the Southern Railway & Steamship Association, and Troy as well as Montgomery is located on those roads. The haul from Montgomery over the Georgia Central to the Atlantic ports named is about ten miles longer than from Troy over that road, and the haul from Montgomery to those ports over the Alabama Midland is fifty-two miles

longer than from Troy, and is also through Troy. The charge of the lesser rate from Montgomery than from Troy over the Georgia Central would seem to be a discrimination against Troy and over the Alabama Midland, also a departure from the "long and short haul rule" of the statute. The principal article of export shipped from Troy and Montgomery over these roads to the Atlantic is cotton. The cotton business of Troy is large, amounting in 1892 to 38,500 bales, aggregating in value \$1,500,000, nearly a third of its total business of all kinds. No excuse is offered, and we are unable to conjecture any valid reason, why Troy is excluded from the benefit of the export system of rate making applied to Montgomery. The fluctuations in ocean rates at the southern ports, and other matters set up by the southern carriers as rendering necessary or justifying this system, would seem to apply to shipments from Troy as well as from Montgomery.

It appears, as alleged in the complaint, that on shipments of cotton from Troy *via* Montgomery to New Orleans, the shipper is charged the full local rate to Montgomery both by the Alabama Midland and the Georgia Central. The local from Troy to Montgomery is 23 cts. per hundred pounds and the rate from Montgomery on is 45 cts., making a total through rate from Troy to New Orleans of 68 cts. The testimony is that under this rate Troy is debarred from shipping cotton *via* New Orleans for Europe, and is left only the outlet *via* Savannah and other Atlantic ports, and that this is a disadvantage to Troy inasmuch as cotton shipped *via* New Orleans is classed "New Orleans cotton," which is valued at from  $\frac{1}{16}$  to  $\frac{1}{8}$  of a cent per pound higher than other cotton.

The haul from Troy to Montgomery may be made either over the Alabama Midland or *via* Union Springs over the lines of the Georgia Central, and from Montgomery to New Orleans it is made over the Louisville & Nashville road.

In the case of *Harwell v. Columbus & W. R. Co.*, 1 Inters. Com. Rep. 681, 1 I. C. C. Rep. 236, cited in his brief by counsel for complainant, it was charged that through rates and through bills of lading were unjustly denied to Opelika on shipments of cotton *via* Montgomery to New Orleans, and the Commission held that such through rates and bills, being

important facilities in the transportation of cotton, and being given on other commodities and to other points similarly situated, should be given Opelika, and that the refusal of the same in the absence of a valid excuse for such refusal was an unjust discrimination against Opelika. In the present case, however, it is neither alleged nor proved that through rates and billing are denied Troy on shipments of cotton *via* Montgomery to New Orleans, but that on the haul from Troy to Montgomery over either the Alabama Midland or the Georgia Central, the local rate between those points is charged and collected as a part of the through rate to New Orleans. The charge is in legal effect that the aggregate through rate thus arrived at is unjustly discriminatory against Troy. "While," as was said in the case of the *Railroad Com. of Florida v. Savannah, F. & W. R. Co.*, 3 Inters. Com. Rep. 688, 5 I. C. C. Rep. 13, "the complainant has no interest in the division the defendants may make between themselves of a through rate and that division does not determine what the charge to the public should be, yet 'it is not without significance in determining what are reasonable rates for the whole distance on the lines in question.'" See *Brady v. Pennsylvania R. Co.*, 2 Inters. Com. Rep. 78, 2 I. C. C. Rep. 131. The distance from Troy to Montgomery over the Alabama Midland (the short line) is 52 miles and from Montgomery to New Orleans over the Louisville & Nashville road 320 miles. The rate of 23 cts. per hundred pounds from Troy to Montgomery is 4.42 mills per mile; the rate of 45 cts. from Montgomery to New Orleans is 1.40 mills per mile; the rate of 47 cts. from Troy to Savannah (359 miles) is 1.30 mills per mile; and the rate of 45 cts. from Montgomery to Savannah (411 miles) is 1.09 mills per mile. There is, also, a through rate on cotton from Columbus, Ga., to New Orleans of 50 cts. per hundred pounds. The distance from Columbus to New Orleans over the Georgia Central *via* Union Springs to Montgomery and thence over the Louisville & Nashville road is 414 miles, and this rate of 50 cts. is 1.20 mills per mile. It thus appears that the rate of 23 cts. from Troy to Montgomery is, on a mileage basis, four times as large as that from Montgomery to Savannah, and more than three times as large as the rates from Montgomery and from

Columbus to New Orleans, and from Troy to Savannah. The aggregate through rate from Troy to New Orleans of 68 cts. yields 1.80 mills per mile.

Through rates, it is true, are not required to be made on a strictly mileage basis, but mileage is, as a general rule, an element of importance, and "due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges." *McMorran v. Grand Trunk R. Co. of Canada*, 2 Inters. Com. Rep. 604, 3 I. C. C. Rep. 252. The cost of the services in railway transportation is the expense, of the two terminals and the intermediate haul. The terminal expenses remain the same without reference to the length of the haul. A local rate covers the expenses of *both* terminals, but a division of a through rate allotted to either of the terminal carriers of the through line can only embrace the expense of one terminal, and because of this difference in expense, among other reasons, local rates are made as a general rule much higher in proportion to the length of haul than through rates or any division thereof. A local rate, which presumably is adopted as covering both the initial and final expenses of the haul, is *prima facie* excessive as part of a through rate over a through line composed of two or more carriers. The rate of 23 cts. from Troy to Montgomery is admitted to be the local between those points, which is charged on a haul originating at the former and ending at the latter, and hence covers the expense to the carrier (either the Alabama Midland or the Georgia Central) at both terminals.

The evidence does not show what the expense at Troy is, but the relatively disproportionate charge for the haul and expense from Troy to Montgomery, as shown above, casts the burden on the carrier of justifying it, and hence of showing what the expense is. It is a matter lying peculiarly within the knowledge of the carrier. In the case of *McMorran v. Grand Trunk R. Co. of Canada*, *supra*, it is said: "The evidence does not show with any precision what these several expenses [terminal among others] are. . . . The defendants assume in their brief that the burden of showing these expenses was upon the petitioner; but this assumption is

altogether erroneous. It would impose on persons conceiving themselves aggrieved by carriers a difficult and onerous rule of evidence. It would be impossible for the petitioners to show such facts otherwise than by the defendants' agents, and it was clearly the province of the defendants to make them appear. No presumption arises that a rate is reasonable from the mere fact that it has been put in effect; and when it is *prima facie* disproportionate or relatively unequal, the *onus* is on the carrier to justify its charges when challenged on these grounds. The knowledge of the justifying circumstances and conditions relied on is peculiarly in possession of the carrier."

On the hauls from Montgomery to New Orleans, from Montgomery to Savannah, from Troy to Savannah, and from Columbus to New Orleans, there are the expenses of both terminals as well as the haul from Troy to New Orleans. It cannot be assumed that on a haul from Troy to New Orleans the initial expenses at Troy are greater than at Montgomery on haul from that point to New Orleans, or to Savannah, or at Columbus on haul from that point to New Orleans, or at Troy itself on a haul in the opposite direction to Savannah. No reason has been shown, and we can conceive of none, why a higher proportionate rate should be charged on cotton from Troy to New Orleans, than from Montgomery, or from these other points on the several hauls mentioned. The disproportion, as we have seen, is attributable to the charge, as a part of the through rate to New Orleans, of the local from Troy to Montgomery, and the truth appears to be that this exaction of the local rate is an incident, and in pursuance of what is termed the "trade center," or "basing," or "distributing point" system, which the Commission has more than once condemned as unjust discrimination and in violation of law, and which we will be called on to refer to more at length in connection with the class rates from Louisville, Cincinnati and St. Louis to Montgomery, Columbus and Troy, hereafter to be considered.

A rate from Troy to New Orleans based on the present mileage rate from Montgomery to that city would amount to 52.21 cts. As a general rule, however, while the aggregate

through rate steadily increases as the distance increases, the rate per ton or hundred weight per mile decreases. Under this rule, the distance from Troy being 52 miles greater than from Montgomery, the rate per hundred pounds per mile from Troy, in the absence of exceptional conditions, should be slightly less than that from Montgomery. In view of this rule, and of the rate of 50 cts. from Columbus, a longer distance point by 42 miles than Troy, our conclusion is that the through rate on cotton from Troy *via* Montgomery to New Orleans should not exceed 50 cts. per hundred pounds.

The class rates in cents per hundred pounds (except Class F, which is per bbl.) to Troy, Montgomery and Columbus from Louisville, Cincinnati and St. Louis, are given in the following table:

Classes. From	1	2	3	4	5	6	A	B	C	D	E	H	F per bbl.
Louisville, Ky., to													
Troy, Ala. ....	140	130	118	95	75½	62	45	50	37	32	69	59	66
Montgomery, Ala. ....	98	92	78	63	52	41	28	31	24	20	48	38	40
Columbus, Ga. ....	107	92	81	68	56	46	28	36	29	25	50	55	50
From													
Cincinnati, O., to													
Troy, Ala. ....	150	140	123	103	82½	68	49	52	39	34	73	63	70
Montgomery, Ala. ....	108	102	88	71	59	47	32	33	26	22	52	37	44
Columbus, Ga. ....	117	102	91	76	63	52	32	38	31	27	54	59	54
From													
St. Louis, Mo., to													
Troy, Ala. ....	168	153	133	109	87½	72	52	58	44	37	77	69	80
Montgomery, Ala. ....	126	115	98	77	64	51	35	39	31	25	56	43	54
Columbus, Ga. ....	135	115	101	82	68	56	35	44	36	30	58	65	64

The local class rates in cents per hundred pounds (except Class F, which is per bbl.) from Montgomery and Columbus, respectively, to Troy, are as follows:

Classes. From	1	2	3	4	5	6	A	B	C	D	E	H	F per bbl.
Montgomery to Troy.	49	46	40	33	27	21	19	21	16	15	27	33	33
From Columbus to Troy.	58	55	48	39	31	24	22	24	19	17	31	39	38

It was testified at the hearing by Mr. Bashinsky, a witness for the complainant, that on goods shipped on through bills of

loading from Louisville and the west to Troy, the Troy merchant is charged the full local rate from Montgomery to Troy and the counsel for the Alabama Midland states in his brief that "the through rate from Troy to any western market is made up by adding the local rate from Troy to Montgomery to the through rate from Montgomery to the west." From a comparison of the above local rates with the difference between the rates from Louisville and the other cities named to Montgomery and Troy, respectively, it will be found that this is true only as to rates on goods of Class 6. The difference between the Class 6 rate to Montgomery and that to Troy from all these points is 21 cts., which is the local rate on that class from Montgomery to Troy. On the other classes the local rate from Montgomery to Troy exceeds the proportion of the through rate between those points as follows:

Classes.	1	2	3	4	5	6	A	B	C	D	E	H	F
Excess of local rate over through.	7	8	5	1	8½	—	2	2	3	3	6	7	6

The distance from Louisville to Montgomery over the Louisville & Nashville road is 490 miles and from Montgomery to Troy over the Alabama Midland, 52 miles. The following table shows the mileage rate on the different classes in mills per hundred pounds yielded by the through rate from Louisville to Montgomery and by the additional charge on through shipments from Louisville to Troy for the haul from Montgomery to Troy:

Classes.	1	2	3	4	5	6	A	B	C	D	E	H	F
Louisville to Montgomery.	2	1.8	1.6	1.3	1.06	.83	.57	.63	.49	.40	.96	.67	.40
Montgomery to Troy.	8	7.1	6.7	5.9	3.8	4	2.6	3.6	2.5	2.3	4	5	2.5

The testimony is that the Troy merchant gets the most of his heavy goods from the west. The Class 6 (on which the through rate from Louisville, St. Louis and Cincinnati to Troy is made by the addition of the local from Montgomery to Troy) embraces sugar, coffee, flour, buckwheat, animal food, cement, axle and car grease, green hides, iron architecture, agricultural implements, nails, spikes, and many other heavy

as well as light articles in constant demand, too numerous to be set forth here. Classes 4 and B on which the difference between the local rate and proportion of through rate from Montgomery to Troy as shown above is only 1 and 2 cents, are applied, the former, among numerous other articles, to machinery of all kinds, agricultural implements, earthenware, mouldings, engines, castings, axes, cotton seed oil mills, dry hides, window glass, ale, beer, porter, canned beef and pork, canned fruit and potatoes; and the latter, among many other articles, to salted beef, pork and bacon. It seems probable that the statement above referred to, made by the witness and counsel, that the through rate from Louisville and the west *via* Montgomery to Troy is made up of the rate to Montgomery plus the local on to Troy, is substantially true as to the goods constituting the bulk of the traffic from those points to Troy. When the mileage rate from Louisville (which point is taken as an illustration) to Montgomery, is compared with that from Montgomery on to Troy, it seems clear that the rate to Troy on all the classes is made from Montgomery as a "basing point." This comparison, it will appear from the table given above, shows that the proportion of the rate from Montgomery to Troy is from four to seven times as large per mile as that from Louisville to Montgomery.

The following table shows the sum of the rates on class goods from Louisville to Montgomery and Troy respectively, plus the rates from those points on re-shipment to Brundidge, Ozark, and Dothan:

## FROM LOUISVILLE, KY.

(In cents per 100 lbs. except Class F, which is per bbl.)

Classes.	1	2	3	4	5	6	A	B	C	D	E	F per bbl.
To Brundidge, Ala. Re-shipped from Montgomery, Ala.....	146	136	117	98	81	65	52	52	38	33	72	68
To Brundidge, Ala. Re-shipped from Troy, Ala.....	168	154	135	115	93½	76	59	62	46	40	83	84
To Ozark, Ala. Re-shipped from Montgomery.....	156	144	122	108	84	67	54	54	40	35	74	72
To Ozark, Ala. Re-shipped from Troy, Ala.....	178	161½	143	122	96½	80	59½	66	49	43	87	90
To Dothan, Ala. Re-shipped from Montgomery.....	162	147	125	106	88	71	57	57	40	35	78	72
To Dothan, Ala. Re-shipped from Troy, Ala.....	188	174	152	130	104½	86	69	71	51	45	93	94



Brundidge, Ozark and Dothan are towns and stations on the Alabama Midland Railway, all east of Troy, and shipments to them over that road from Montgomery pass through Troy. Brundidge is 17 miles from Troy and 69 from Montgomery; Ozark, 40 miles from Troy and 92 from Montgomery; and Dothan, 68 miles from Troy and 120 from Montgomery.

The sum of the rates from Louisville to Columbus and Troy, respectively, plus the rates on re-shipments from those cities to Brantley, in cents per 100 lbs, except Class F, which is per bbl., are as follows:

#### FROM LOUISVILLE.

Classes.	To Brantley, Ala., re-shipped from Columbus.	To Brantley, Ala., re-shipped from Troy.
1	1.73	1.76
2	1.53	1.64
3	1.32	1.43
4	1.10	1.19
5	90	95½
6	73	78
A	52	60
B	63	66
C	50	50
D	44	44
E	84	89
F per bbl.	92	92

Brantley is on the Georgia Central road 26 miles south of Troy and 111 miles from Columbus, and goods shipped from Columbus to Brantley over that road pass through Troy. A like disparity in rates on re-shipments prevails as to points west of Troy on the Alabama Midland and north of Troy on the Georgia Central, the distances of which from Troy are much less than from either Montgomery or Columbus; and the situation in this respect is the same when the shipments originate at Cincinnati, and other Ohio river points, and at St. Louis, as when they come from Louisville.

The fact that the sum of the rates from points of origin to points of destination, as shown in the above tables, on re-shipments from Montgomery, Columbus and Troy, are greater

in cases of such re-shipments from Troy than from Montgomery and Columbus, is attributed by the complainant to alleged relatively unjust through rates to Troy as compared with those to Montgomery and Columbus. There is no allegation and no proof that the rates to Montgomery and Columbus are unreasonable in themselves. The through rate to Troy is, therefore, the object of attack.

The differences in rates as against Troy, it will be noted, are much smaller on re-shipments from Columbus than on re-shipments from Montgomery, and the local rates from Columbus to Troy are much greater than the difference between the through rates to Columbus and those to Troy. It is not shown that there are through rates from Louisville, St. Louis and Ohio river points *via* Columbus to Troy, *based on the Columbus rate*, and the natural course of the traffic from those points to Troy appears to be *via* Montgomery. As before stated, the through rates to Troy are based on the Montgomery rates and in making them Montgomery is treated as a "trade center" or "basing point" and Troy as a local. This is conceded on the part of the defendants. The vice in the through rate to Troy, if any, arises from this fact and from the consequently greatly disproportionate charge for the haul from Montgomery to Troy, when compared with that from Louisville and the west to Montgomery.

The "trade center" or "basing point" system has been in many cases pronounced unlawful by this Commission. *Re Louisville & N. R. Co.* 1 Inters. Com. Rep. 289, 290, 1 I. C. C. Rep. 84, 85; *Martin v. Chicago, B. & Q. R. Co.* 2 Inters. Com. Rep. 38-40, 2 I. C. C. Rep. 44-47; *Harwell v. Columbus & W. R. Co.* 1 Inters. Com. Rep. 631, 1 I. C. C. Rep. 236. In the Louisville & Nashville case, it is said, in this connection, that the Act to regulate commerce "aims at equality of right and privilege, not less between towns than between individuals, and will no more sanction preferential rates for the purpose of perpetuating distinctions than of creating them;" and in the *Martin Case*, the statute is declared to be one "enacted in the interest of equality as between large and small interests," under which "there can be no unjust discrimination in giving to large and small towns relatively equal rates." It is further

said in the latter case that "a fatal difficulty with the theory that a trade center as such is entitled to specially favorable rates is found in the fact that it is in conflict with the spirit and purposes of the Act to regulate commerce—one of the reasons for the passage of which was, that by means of rebates and other contrivances, large towns and heavy dealers secured advantages which gave them a practical monopoly of markets and shut out the small towns and small dealers." In a recent decision by the Supreme Court of the United States in a case brought up from the United States Circuit Court, for the District of Colorado (*Union P. R. Co. v. Goodridge*, 149 U. S. 680, 37 L. ed. 896), *Mr. Justice Brown*, in speaking of the purpose of the Colorado act under consideration as being the same as to intrastate commerce as that of the Act to regulate commerce as to interstate commerce, says very forcibly that it was designed "to cut up by the roots the entire system of rebates and discriminations in favor of *particular localities*, special enterprises, or favored corporations," and pertinently refers to the fact that carriers, being dependent upon the will of the people for their corporate existence, are "bound to deal fairly with the public, to extend them reasonable facilities for the transportation of their persons and property, and to put all their patrons upon an absolute equality;" citing *Scofield v. Lake Shore & M. S. R. Co.* 43 Ohio St. 571; *Sandford v. Catawissa, W. & E. R. Co.* 24 Pa. 378; *Messenger v. Pennsylvania R. Co.* 36 N. J. L. 407; *McDuffee v. Portland & R. R. Co.* 52 N. H. 430. The fact, therefore, insisted upon by counsel for the roads as a matter of defense, that Montgomery is a much larger city with more extensive business interests than Troy, and is and has been treated by the roads in making rates to Troy and other surrounding towns as a "trade center" or "basing point," is no justification for discriminations in those rates in favor of Montgomery.

Water and rail competition at Montgomery are also set up as justifying the disproportion in the rates in question as between Troy and Montgomery. Here, as we have shown in connection with the violations of the long and short haul rule of the statute, these defenses are not sustained by the proof. Water competition *via* the Alabama river, in order to control

rates from St. Louis and Louisville, Cincinnati and other Ohio river points, on traffic from those cities stopping at Montgomery, must, it is obvious, grow out of transportation of such traffic *via* Mobile *up* the river to Montgomery. The carriage of goods by river from or *via* Montgomery to Mobile would be limited in its effect to rates to the latter city. Water transportation may be possible from localities on the Ohio and Mississippi rivers *via* those rivers to the Gulf at New Orleans, on the Gulf to the Alabama river at Mobile and up that river to Montgomery, and the Mobile & Ohio Railroad carries freight from St. Louis to Mobile, which might be transported thence up the Alabama river to Montgomery. No competition by either of these routes is shown in this case on traffic from St. Louis or Ohio river points to Montgomery, and it does not seem probable that such competition of controlling force is likely to arise. That it does not now exist would appear to be indicated by the lower rates from St. Louis, Cincinnati and Louisville to Mobile than to Montgomery at present prevailing, as shown in the following table:

Distances.	Classes.	1	2	3	4	5	6	A	B	C	D	E	H	F
644 miles <i>via</i> M. & O.	From St. Louis to	90	75	65	50	40	35	25	25	25	20	23	25	45
805 miles <i>via</i> L. & N.	Mobile .....													
625 miles <i>via</i> L. & N.	From St. Louis to	125	115	95	77	64	51	35	30	31	25	55	43	54
	Montgomery ..													
669 miles <i>via</i> L. & N.	From Louisville	90	75	65	50	40	35	25	25	25	20	23	25	45
	to Mobile .....													
490 miles <i>via</i> L. & N.	From Louisville	95	93	73	53	32	41	23	31	24	20	43	33	40
	to Montgomery.													
779 miles <i>via</i> L. & N.	From Cincinnati	95	83	73	54	44	30	23	27	27	23	31	23	40
	to Mobile .....													
600 miles <i>via</i> L. & N.	From Cincinnati	108	102	83	71	59	47	33	33	23	23	53	37	44
	to Montgomery.													

*Note.*—The above rates are in cents per 100 lbs., except Class F, which is per bbl.

Although over the lines of the Louisville & Nashville Company the distances from all three of the above cities to Mobile is 180 miles greater than to Montgomery, and the haul to Mobile is through Montgomery, the rates to the latter are materially higher than to the former. The higher rates to Montgomery than to Mobile shown in the above table seem inconsistent with the claim that the rates to Montgomery are controlled by water competition *via* Mobile up the Alabama river to Montgomery.

What we have said in reference to the through rate on shipments of cotton from Troy to New Orleans, as to the

charge of a local as part of a through rate and as to the burden of proof where rates are shown to be disproportionate and preferential, is applicable in connection with the rates now under investigation.

Our conclusion on this branch of the case is that the through class rates from Louisville, St. Louis, Cincinnati, and the west to Troy are relatively unjust to that city, when compared with those to Montgomery, and that this injustice arises from the practice of basing the Troy rates on the rates to Montgomery as a "trade center."

The question remains to be determined, what the rates to Troy shall be. In arriving at a conclusion on this point, no light is furnished by proof of cost of service or other matters proper to be considered in determining what rates are just and reasonable from the standpoint both of the carrier and shipper. If there is an expense incident to the continuation of the through haul to Troy, which calls for and justifies exceptional rates, the burden, as we have seen, is upon the carrier to show it. The roads, however, do not claim that there is anything in the nature of the service of transportation to Troy which justifies the disproportionate rates charged to that city, but base their defense of those rates on another and distinct ground (which we hold not to be established), namely, dissimilarity of circumstances, and conditions resulting from water and rail competition at Montgomery. In the absence of proof of exceptional conditions, the transportation from Montgomery to Troy, including terminal expenses, will be presumed to be not more costly to the carrier than for like distances in the same or like territory. On examination we find that the class rates from Louisville, Cincinnati and St. Louis and Ohio river points generally, are the same to Columbus, Eufaula and Opelika. The distances from Louisville and St. Louis to Columbus by the shortest available route (that *via* Birmingham and Opelika over the Columbus & Western road) are nine miles greater and by the routes *via* Montgomery are about 42 miles greater than to Troy. The distance from Cincinnati to Columbus by the shortest route appears to be about 14 miles less than to Troy. The distances to Eufaula are greater than to Troy, and to Opelika, they are

somewhat less. The distances from the cities named to Columbus and Eufaula being on the average greater than to Troy, and other things being equal, the rate to Troy should, if anything, be slightly less than to those cities. No substantial dissimilarity of circumstances and conditions justifying a higher rate to Troy, has been attempted to be shown. The class rates in cents per hundred pounds (except Class F which is per bbl.) to Columbus, Eufaula and Opelika, and to Troy, from Louisville, and the excess of the Troy rates over those to Columbus, Eufaula and Opelika are given in the following table:

Classes.	1	2	3	4	5	6	A	B	C	D	E	H	F
													Per bbl.
From Louisville to Columbus, Eufaula, and Opelika .....	107	92	81	68	56	46	28	36	29	25	50	55	50
From Louisville to Troy .....	140	130	113	95	75½	62	45	50	37	32	69	59	66
Excess of Troy rates .....	33	38	32	27	19½	16	17	14	8	7	19	4	16

The excess of the Troy rate is the same under the rates from Cincinnati and St. Louis.

The above rates to Columbus, Eufaula and Opelika, if applied to Troy, yield the following rates in cents per ton per mile on the different classes:

Classes.	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate per ton per mile ..	3.94	3.39	2.99	2.50	2.06	1.69	1.03	1.32	1.07	.92	1.84	2.03	.92

These mileage rates average on all the classes 1.97 cents, and are somewhat greater than are realized on the application of the same through rates to the hauls to Columbus and Eufaula. The above average of 1.97 cents and the above mileage rates on 8 out of the 13 classes are greater than the average receipts per ton per mile and estimated cost of carrying a ton a mile for the years ending June 30, 1891 and 1892, as reported by the Louisville & Nashville R. Co., the Alabama Midland and Georgia Central, and which are given in the following table:

Name of Road.	1891.		1892.	
	Average receipts.	Estimated cost.	Average receipts.	Estimated cost.
Louisville & Nashville R. Co. ....	cts. .968	cts. .614	cts. .948	cts. .621
Alabama Midland Ry. ....	1.745	.990	1.856	1.400
Central R. R. of Georgia ..	1.529	1.012	*	*

\* Report for four months by the receiver of the Richmond & Danville Railroad does not give these items.

Columbus and Eufaula are located in or are contiguous to the territory in which Troy is situated, and the former, at least, is in active competition with Troy for business in the country immediately around Troy. We are of the opinion that the class rates to Troy from Louisville, Cincinnati and St. Louis should be at least as low as those above given to Columbus and Eufaula.

It is claimed on the part of the roads, that the establishment of lower rates to Troy will disarrange and call for a re-adjustment of the rates to the localities around Troy in order to prevent unjust discrimination in favor of Troy and against such localities. It appears, from the tariffs on file with the Commission, that the through rates to these points around Troy are made on the basis of the rates to Montgomery plus the local rates from Montgomery on—in other words, that Montgomery is given the undue advantage of a “trade center” as against these points. This being the case, these rates now call for re-adjustment with a view of remedying the unjust discrimination thus appearing. The adjustment of the rates to these points so as to make them conform to the reduced rates which we have ordered for Troy, will tend to bring them in line with the law and do away with the unjust discrimination in favor of Montgomery already existing under them. It certainly cannot be held to be a valid objection to the correction of unlawful rates to one locality, that it involves a like correction as to other localities. Unjust discrimination as between localities or individuals cannot be essential to the business prosperity of the roads; on the contrary, we believe that in the end, if not immediately, their financial welfare would be promoted by the application in the matter of rate making of the principle of absolute fairness as between all interests, large and small, enjoined by the statute. Rates should in the first instance be fixed upon a fairly remunerative basis and then so applied as to result in no undue advantage or disadvantage to any interest. It will devolve upon the roads to make whatever changes in rates to surrounding towns may be incidental to, and a necessary consequence of, compliance in good faith with our order in reference to the rates to Troy.

In pursuance of the conclusions arrived at in this case, it is ordered that the roads participating in the traffic involved cease and desist, (1), from charging and collecting on class goods shipped from Louisville, St. Louis and Cincinnati to Troy a higher rate than is now charged and collected on such shipments to Columbus and Eufaula; (2), from charging and collecting on cotton shipped from Troy *via* Montgomery to New Orleans a higher through rate than 50 cts. per hundred pounds; (3), from charging and collecting on shipments of cotton from Troy for export *via* the Atlantic seaports, Brunswick, Savannah, Charleston, West Point and Norfolk, a higher rate to those ports than is charged and collected on such shipments from Montgomery; (4), from charging and collecting on cotton shipped from Troy to Brunswick, Savannah and Charleston, a higher rate than is charged and collected on such shipments from Montgomery through Troy to those ports; (5), from charging and collecting on class goods, shipped from New York, Baltimore and the northeast, to Troy, a higher rate than is charged and collected on such shipments to Montgomery; and (6), from charging and collecting on phosphate rock shipped from the South Carolina and Florida fields to Troy a higher rate than is charged and collected on such shipments through Troy to Montgomery.



**PHELPS & COMPANY V. THE TEXAS & PACIFIC  
RAILWAY COMPANY.**

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Complaint filed March 2, 1892.—Answer filed April 13, 1892.—Amendment to complaint filed April 22, 1892.—Amended answer filed June 4, 1892.—Heard at New Orleans, La., March 13, 1893.—Brief for defendant filed August 18, 1893.—Decided October 16, 1893.

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1. The rates which carriers are required by the sixth section of the statute to publish, file, and adhere to without deviation cover, not merely the carriage, but services rendered in receiving and delivering property as well.
2. The lien of carriers upon freight for charges earned is satisfied by the payment of rates for their services which they are lawfully entitled to demand, and a guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, cannot be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made.
- 3 The Interstate Commerce Act does not recognize indefinite or uncertain transportation charges; the idea of unequal compensation for like service, or discrimination in the treatment of persons similarly situated is repugnant to every requirement of that law, and a party to an interstate shipment cannot be excluded by the carrier from privileges afforded to other patrons in the same locality because of his refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should accompany the demand.
4. When actual weights of cotton shipments cannot be ascertained without great inconvenience to the shipper or carrier, and when transportation charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee, a practice of billing the cotton at a proper estimated weight per bale should not be deemed unlawful.
5. The retention of an overcharge has all the effect of extortion and unjust discrimination against the person from whom its payment has been required, and when the refund of an excessive charge has been unnecessarily delayed for a considerable period the officials responsible therefor become fairly chargeable with wilful intention to violate the law.

*Ashton Phelps*, for complainants.  
*John S. Blair, T. J. Freeman, and Howe & Prentiss*, for  
 defendant.

REPORT AND OPINION OF THE COMMISSION.

**KNAPP, Commissioner :**

The principal grievance alleged in the complaint is that unjust discrimination arises from the refusal of defendant to deliver uncompressed cotton consigned to complainants at New Orleans upon the same terms as it delivers such cotton for other consignees in that city; in other words, that the defendant delivers uncompressed cotton to compress companies, except the Alabama & Factors' Press Company, without requiring the payment of freight charges before delivery, such compress companies having previously, by a guaranty in writing, made themselves responsible for freight charges in case payment thereof should be refused by the consignees, while the defendant refuses to deliver complainants' cotton to the Alabama & Factors' Press Company, or the cotton of other consignees dealing with that company, except upon the payment of transportation charges before delivery, and also declines to accept or recognize a similar guaranty of freight charges from said Alabama & Factors' Press Company.

The defendant admits the discrimination, but contends that it is justified by the refusal of complainants to pay freight charges demanded, and by the subsequent refusal of the compress company to carry out its guaranty to promptly pay freight charges demanded by defendant in case complainants should fail to do so. The position of the defendant is clearly stated in the following extract from its answer: "Your respondent denies that in requiring payment before delivery of shipments to certain consignees or their agents, who decline to carry out the guarantee above mentioned, they are nullifying any provision of law relating to common carriers, and it further denies that in waiving its right of lien to other consignees or their agents who do observe such guarantees it is guilty of an unjust discrimination."

On the other hand, complainants assert that neither they nor the compress company refused to pay proper and just rates of freight; that the charges over which this controversy arose were excessive and unjust, as is shown by their subsequent correction; and that these guarantees by compress companies are "given under duress, as a refusal to do so would be followed by arbitrary measures, attended by an immense amount of practical inconvenience, as has actually happened in the case of your petitioner and the presses where they store their cotton." "Your petitioner submits that a railway company cannot assume, through an extorted agreement of this kind, to nullify the provisions of the law relating to common carriers."

Another feature of the complaint is that defendant demands unlawful rates on cotton carried by weight by estimating such cotton at 535 pounds per bale when a copy of the original invoice of the cotton or the certificate of a public weigher is not produced. This branch of the case was not made prominent at the hearing, except as tending to show that the rule of estimated weights, in connection with the guaranty of prompt payment of charges above referred to, results in numerous claims of overcharge, and as a basis for the additional allegation that these claims are exceedingly difficult to collect. Indeed, one of the complainants admitted that since the commencement of this proceeding there had been little cause for complaint against the defendant for basing charges upon excessive weights.

#### FACTS.

There is little disagreement between the parties as to the material facts in this case and they can be very briefly stated:

1. The complainants are a firm of commission merchants extensively engaged in buying and selling cotton in the city of New Orleans, and their solvency is not questioned in this proceeding.

2. It is a general custom in that city for cotton dealers or "factors" to have uncompressed or "flat" cotton consigned to them delivered direct by the railroad to drays of the cotton

presses which they patronize, and the railroads do not require payment of freight charges before such delivery, provided the compress company has previously executed and delivered a guaranty making itself responsible for such charges. This arrangement insures the prompt removal of a bulky class of freight from the yards and depots of the carriers, and the compress company's guaranty saves them from any loss which might arise from the relinquishment of their lien for freight charges resulting from delivery of the cotton before payment of such charges. It also saves much time, trouble and expense to consignees and the cotton presses they employ. This method of facilitating the quick delivery of cotton is advantageous to all parties concerned.

3. The form of guaranty required by the defendant was as follows :

"THE TEXAS & PACIFIC RAILWAY CO.

"Office of Frt. Agt. New Orleans.

"STATE OF LOUISIANA, }  
"CITY OF NEW ORLEANS. }

"In consideration that the Texas & Pacific Railway Company shall deliver to the Alabama & Factors' Cotton Press, its Agents or Draymen, from time to time, any cotton without insisting on the freight and charges thereon being first paid by the respective consignees, whereby the said railway company may lose its lien.

"We hereby agree to and do guarantee the payment of such freight and charges on any cotton so delivered to said press, or to any draymen or agent of ours, and bind ourselves to pay the same on demand in case the respective consignees fail to do so. It is well understood that such freight and charges shall be paid under this guaranty in full without any delay, and without waiting for the discussion or settlement of any claims by any person with respect to such cotton for overcharge, damage, bad order, or any other cause—all such claims upon any ground of complaint whatever to be made after the payment of such bills of freight and charges, and according to the rules of the Texas & Pacific Company governing such cases."

There is nothing in the case which tends to show that the management of the Alabama or the Factors' Press is not pecuniarily responsible, and no such claim was made by the defendant.

4. The authority of the defendant to deliver cotton after the press had given its guaranty is shown by the following exhibits :

**"THE TEXAS & PACIFIC RAILWAY CO.**

"Office of Freight Agent.

"New Orleans, La., August 15th, 1890.

"To Manager Alabama & Factors' Press:

" Tchptls. St., bet. Henderson & Robin, New Orleans, La.

"Dear Sir:—Will you please indorse hereon the name of the drayman that is authorized to haul 'Flat Cotton' from this Railway to your press, and have drayman indorse hereon the names of his clerks that have authority to sign for same.

"Yours truly,

"F. M. Folger, M. C., Freight Agent."

"Mr. A. McLaughlin will dray 'Flat Cotton' to be stored in our press.

"P. P. S. Hayward,

"J. D. Hayward,

"Alabama and Factors' Managers Press."

"Mr. John T. Barry is authorized to dray and sign for 'Flat Cotton' to be drayed to ——— Press.

"A. McLaughlin, Drayman."

**"THE TEXAS & PACIFIC RAILWAY CO.**

"Office of Frt. Agt., New Orleans, La.

8, 16, 90.

"Messrs. Phelps & Co., 193 Gravier.

"Cotton Factors, New Orleans, La.

"Dear Sir:—Will you please indorse hereon the name of the press you desire this railway to deliver your 'Flat Cotton' for the season of 1890 and 1891.

"Yours truly,

"F. M. Folger, M. C., Freight Agent."

"Deliver 'Flat Cotton' consigned to us to the Factors' Press, unless otherwise ordered.

"Phelps & Co."

5. Early in 1891 the defendant carried three lots of flat cotton to New Orleans, which had been shipped to complainants from points on the Red River in Arkansas, to wit: one lot of four bales consigned by H. A. Hawkins, from Hawkins' Landing, Ark., and one lot of one bale and another of sixteen bales shipped by Gaffney & Brigance from Opah Place, Ark. The shipments were all made in January, 1891, and carried by the steamer "Belle Crooks" to Fulton, Ark., where they were turned over to the St. Louis, Iron Mountain & Southern for transportation to New Orleans by that road

and the Texas & Pacific Railway, the defendant herein. The steamer Belle Crooks issued through bills of lading to the shippers, specifying that the through charge to New Orleans would be \$4.00 per bale from Hawkins' Landing and \$4.50 per bale from Opah Place. The bills of lading were sent by the shippers to Phelps & Co., the complainants. The steamer did not give copies of the bills of lading to the Iron Mountain agent. Those rates made the expense of transportation to New Orleans \$16.00 on the four bales from Hawkins' Landing and \$76.50 on the twenty-one bales from Opah Place, a total of \$92.50. By notices dated February 7 and 20, 1891, the defendant notified complainants of the arrival of these lots of cotton, and after delivery to the Factors' Press, according to complainants' standing order, defendant's agent presented expense bills at complainants' office specifying \$18.00, or \$4.50 per bale, for the four bales from Hawkins' Landing, and \$85.00, or \$5.00 per bale, for the seventeen bales from Opah Place, a total of \$103.00. The difference between the bills of lading and expense bills was, therefore, \$10.50, or 50 cents per bale. Complainants refused to pay more than the through bills of lading called for. Defendant's agent then demanded payment from the Factors' Press under the terms of its guaranty. The manager of the press also refused to pay charges in excess of those named in the bills of lading, but offered to deposit the whole amount claimed until the matter should be adjusted. The agent declined this offer and reported the facts to the general office of the defendant at Dallas, Texas, from whence he was instructed to cease delivering cotton to the Factors' Press (and also to the Alabama, under the same management), for Phelps & Co., the complainants, or any other consignees, unless the freight charges were paid prior to delivery. This order was at once put into effect. The expense bills were not paid as demanded and so the matter stood for about a year, that is, until shortly after this complaint was filed, when the defendant presented bills corrected to the bill of lading charges, and they were promptly paid by complainants. The evidence does not show why it was thought necessary to defer for more than a year the settlement of a dispute over freight bills covering the charges

of but three carriers, or rather only two carriers, for the railroads were operating under a joint tariff.

The charges from the point of shipment to New Orleans were made by adding the charge of the vessel to the joint tariff rate of the railroads from Fulton to New Orleans. The shipment was through, however, and the carriage over the connecting lines was continuous. This joint tariff rate of the roads was \$3.00 per bale, and, in the absence of any joint rate with the vessel, the charges of the latter according to its own bills of lading must have been \$1.00 from Hawkins' Landing and \$1.50 from Opah Place. The through bills of lading of the steamer did not, as before stated, accompany the shipment when delivered to the Iron Mountain road, and the Texas & Pacific did not have actual knowledge of their contents until complainants produced them. Upon delivering the cotton to the Iron Mountain road the steamer line demanded and received for its charges the sum of \$1.50 per bale from Hawkins' Landing and \$2.00 per bale from Opah Place, and these charges added to the \$3.00 joint tariff rate of the railroads made the sum per bale demanded exceed the bills of lading rates by 50 cents per bale, and this accounts for the overcharge. After correspondence with the railroad companies, the steamer line refunded the overcharge of \$10.50 to the Iron Mountain road, and the Texas & Pacific, upon being advised thereof, made the expense bills agree with the bills of lading. The new expense bills, showing the refund by the steamer line, were presented to complainants on March 19, 1892, and immediately paid. So the overcharge was settled. But the defendant has nevertheless kept its order forbidding delivery to the Alabama and Factors' Presses before payment of freight in full force and effect, with the exception of a few shipments for consignees other than Phelps & Co., the delivery of which occurred through the oversight of a clerk.

6. The defendant insists upon payment of the freight charges specified in its expense bills when presented to the consignee, leaving the amount of any excess collected to be afterwards determined and refunded upon the filing by the consignee of claim for overcharge. Sometimes the cotton is transported at so much per bale. This was the case with

these shipments from Opah Place and Hawkins' Landing to New Orleans. Cotton Tariff No. 425 of the Texas & Pacific, effective October 12, 1891, names rates per hundred pounds on uncompressed cotton and bears this notation:

**MINIMUM WEIGHTS ON COTTON.**

"In all cases where the certificate of a public weigher, or a certified invoice of the actual gross weight, is not furnished at point of shipment, the minimum weight to be charged on cotton shall be 535 pounds per bale on shipments to the Mississippi river and the Missouri river, and to Houston and Galveston, the cotton to be billed at actual weight subject to the minimum as above, any overcharge that may arise to be refunded only on presentation of original invoice of the cotton or certificate of the public weigher."

"Cotton for domestic points and foreign ports shall be taken at actual gross invoice weight."

"In all cases where a certificate of a public weigher or a certified invoice of the actual gross weight is furnished at point of shipment, agents will note on face of billing: This Cotton Billed at Actual Gross Invoice Weight."

It is claimed by defendant that until the actual weight is ascertained, either at the point of shipment or point of destination, shippers should pay for a prescribed minimum weight and have any excess returned to them afterwards, and that complainants have no just cause of complaint when the defendant is willing to accept their weights. One of the complainants testifies, however, that claims for overcharge, besides not being promptly adjusted, do not even receive early attention, and two accounts of overcharges presented a year prior to the hearing were put in evidence as not having been paid, or, so far as complainants could learn, even considered. In this connection the following uncontradicted testimony of Mr. Phelps is pertinent: "It is very slow work to collect an overcharge. I would like to file with the Commission a statement of overcharges which arose on shipments a year ago, and which we paid with the assurance that in the event of there being an overcharge the money would be



refunded without the formality of putting a claim into the company. It is against the Texas & Pacific Company. We have written to Mr. Fenby at Dallas, and he never had the courtesy to reply. Mr. Reese, commercial agent of the Texas & Pacific road at the time, assured us that when the cotton was sold they would refund the overcharge without the formality of making a claim. We have never got the money yet. While the amount of money in this case is small, it might in some cases be very large. We do a large business, and drafts are drawn against those shipments payable at sight, and unless the bill of lading is conclusive, we cannot tell where we stand. In these transactions if we do not know what freight we have to pay we cannot form a basis of calculation." Defendant's agent testified that great care is taken to revise way-bills from published tariffs before the expense bills are made out, and that the bills are afterwards revised in the auditor's office. It is fairly deducible from the evidence, and we so find, that, while great care is exercised by defendant to insert only proper charges in expense bills which it presents to consignees of flat cotton, complainants have experienced much difficulty in getting their overcharge claims promptly adjusted."

#### CONCLUSIONS.

The main point to be decided is whether the discrimination admitted in this case is unjust.

The defendant, upon the refusal of complainants, and subsequently of the compress company, to pay the freight charges demanded on three lots of cotton, prohibited future delivery of "flat" cotton to the compress company for complainants or other consignees except upon the payment of transportation charges due thereon, notwithstanding the custom of defendant and other carriers to deliver such cotton to compress companies in New Orleans without requiring previous payment of charges. This prior delivery is unconditional and amounts to a surrender of the carrier's lien on the freight for charges earned, but the carrier requires and obtains, in consideration of such surrender of lien, a guaranty or contract from each compress company, whereby it agrees to pay the freight charges

on demand, in case consignees refuse to make such payment. The guaranty set out in the third finding contains this clause: "It is well understood that such freight and charges shall be paid under this guaranty *in full* without any delay and without waiting for the discussion or settlement of any claims by any person with respect to such cotton for overcharge, damage, bad order, or any other cause—all such claims *upon any ground of complaint whatever* to be made after the payment of such bills of freight and charges, and according to the rules of the Texas & Pacific Company governing such cases." The complainants and the guaranteeing compress company refused to pay the charges demanded on the three lots of cotton above mentioned upon the ground that such charges were excessive. Thereupon the defendant chose to regard the guaranty as canceled, and, although soon after the filing of this complaint the charges were admitted to be excessive and settled according to complainants' claim, the order prohibiting delivery to the compress company before payment of freight charges has never been rescinded.

The object of the guaranty or contract, as expressed therein, is to secure immediate transfer of the cotton from the carrier's depot or yards to the warehouse or press of the compress company, and to indemnify the carrier against such loss as the relinquishment of its lien upon the property for freight charges might entail. Such quick removal of large quantities of bulky freight is an advantage to the carrier as well as to the owner and the compress company, and there is nothing in the evidence which warrants a finding that this transfer of possession constitutes additional service for which the carrier is entitled to additional charge; and it is due to the defendant to say that it does not make any such pretension. It is proper also to point out that if this were the fact any additional charge in this case would still violate the law, for carriers are required to publish, file, and adhere to their rates without deviation, and such rates cover not merely the carriage, but services rendered in receiving and delivering property as well; and there is nothing in defendant's tariffs which, either as carrying or terminal charges, refers to this matter of delivering facilities in New Orleans.

Considered without any reference to its duties as a public carrier, the above-quoted terms of the guaranty might entitle the defendant to immediate payment of whatever sums it should see fit to demand as freight charges; but the provisions of the Act to regulate commerce prohibit it from collecting any excessive charge, and we fail to see how, through relinquishment of its lien or under the most strongly worded guaranty, it can justify even a temporary departure from the law.

The lien of carriers upon freight for charges earned is satisfied by the payment of rates for their services which they are lawfully entitled to demand, and a guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, cannot be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made.

The Interstate Commerce Act does not recognize indefinite or uncertain transportation charges; the idea of unequal compensation for like service, or discrimination in the treatment of persons similarly situated, is repugnant to every requirement of that law, and a party to an interstate shipment cannot be excluded by the carrier from privileges afforded to other patrons in the same locality, because of his refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should accompany the demand.

Therefore, if the charges demanded first of the complainant and subsequently of the guaranteeing compress company were greater than the defendant would have been entitled by law to collect and retain if it had not parted with its lien, an order against the defendant is clearly indicated without consideration of any of the other questions connected with defendant's refusal to continue delivering to the compress company before payment of its charges.

The facts demonstrate that the charges originally demanded by defendant were excessive. There was an overcharge of 50 cents per bale on these three lots of cotton amounting to

\$10.50, and this excess, when investigation was seriously undertaken by defendant and the other carriers, was readily discovered. The existence of error was, moreover, plainly indicated to defendant's agent when, at the time of the original demand, complainants produced the bills of lading issued by the steamboat company. Those bills of lading indicated through charges per bale less than those named in the expense bills. There was no through joint tariff showing the entire rate for the whole distance; the through charge was based upon a combination of the unpublished steamboat charge with the joint tariff rate of the defendant and the Iron Mountain Railroad Company, and defendant's agent and complainants and the compress company all knew of this combination. Now, while the steamboat charges were not published and therefore unknown to the public, the joint tariff of the railroad was published and a matter of common knowledge; therefore, a simple deduction of the joint tariff rate of \$3.00 per bale from the per bale charges specified in the bills of lading was sufficient to point out the probability of error on the part of the steamboat. It was not a case of transportation over half a dozen or more lines charging independent rates; there was here nothing more than the inflexible joint rate of the roads added to the charge of the steamboat, and the steamboat company had itself issued the bills of lading wherein lower total charges were specified than those named in the expense bills of the defendant. No tracing or examination was necessary, therefore, to determine the overcharge. The discrepancy between the contract through rate of the steamboat and the sum of the carrier's charges as shown in the expense bills was quite sufficient to establish a presumption that the steamboat had exacted from the Iron Mountain road a rate per bale in excess of that to which it was entitled under its own agreement with the shipper. This, it seems to us, warranted the complainant and the compress company in demanding a correction of the expense bills, and the offer of the compress company to deposit the whole amount claimed, pending verification or correction of the charges, certainly indicates that it sought no improper advantage and manifested no disposition to be captious or unfair.

The defendant contends there was no common arrangement for continuous carriage or shipment between the boat line and the railroad carriers, and that therefore the steamboat transportation is not a proper subject for our consideration. But this Commission has repeatedly held that the receipt, forwarding, and delivery of traffic by connecting carriers clearly establishes the existence of a common arrangement between the carriers for continuous carriage or shipment. *Mattingly v. Pennsylvania Co.* 2 Inters. Com. Rep. 806, 3 I. C. C. Rep. 592; *Boston Fruit & P. Exch. v. New York & N. E. R. Co.* 3 Inters. Com. Rep. 493, 4 I. C. C. Rep. 664; *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744; *Trammell v. Clyde SS. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324; *Board of Trade of Troy, Ala. v. Alabama Midland R. Co.* 6 I. C. C. Rep. 1.

Moreover, we do not perceive how the defendant's case would be strengthened if its position as to our jurisdiction of the steamer line should be sustained. Even if the steamboat company was not subject to the law as to this transportation, the fact remains that the rail lines are subject to the statute, and that the defendant did demand of complainants and the compress company higher charges than it was entitled to collect and retain for the joint account of itself and the Iron Mountain, upon a showing that the steamboat had made an overcharge above the amount it declared itself willing to accept in the bills of lading which it issued; and the subsequent action of the steamboat in refunding the overcharge is conclusive upon this point. Moreover, this whole case relates to the action of defendant in New Orleans, and its object is the discontinuance of a discriminating order which defendant would apparently have put in force just as promptly if the overcharge had been made by a connecting carrier concededly subject to the Federal statute; for the defendant broadly contends that it can lawfully make a discrimination of this character whenever for any cause a compress company fails to observe the terms of its guaranty. The defendant does not endeavor to justify the discrimination upon any ground which has reference to the character of any carrier concerned with the cotton on which the overcharge was made. Its reason for

exacting prior payment of charges before delivery of cotton for consignees to this compress rests wholly upon its contention that the compress company refused to carry out to the letter the terms of its guaranty; but, as we have ruled above, it was not entitled to require this when by doing so it would compel the payment of an excessive freight charge.

It would seem that this controversy might have been satisfactorily settled by the aid of the telegraph in a few hours, but, as is too often the case, each party, believing themselves in the right, obstinately refrained from any attempt to adjust or explain. The defendant took refuge in reprisal; the complainants finally brought this complaint, and a few weeks afterwards the demand of the defendant was correctly modified to conform to the bill of lading charge, the expense bills so reduced were paid, and the excessive character of the original charges was thereby admitted. But it took thirteen months to settle a matter that might easily have been adjusted in as many hours, and the discriminating order of defendant against this compress company and the complainants and others as customers of the compress company was and still is continued. That order having been issued pending a controversy which has been settled, and the complainants and the compress company having been shown guilty of no fault upon which the discriminating order can be justified, it should be rescinded, and we shall direct accordingly.

In what has been said no attack whatever is intended upon the propriety of exacting a sufficient guaranty in return for the surrender of defendant's lien, nor do we impute to the carrier any intention to evade the provisions of the law. This whole matter is merely a misunderstanding which, under the attitude of the parties, authoritative action is required to correct; and for that reason we have carefully confined ourselves to the single consideration whether *upon the exact facts in this case* the defendant was justified in making the discrimination.

As to the other branch of the case we do not think that a plan of billing cotton at a proper estimated weight per bale should be deemed unlawful when actual weights cannot be ascertained without great inconvenience to the shipper or carrier, and when charges are promptly adjusted by the

carrier upon the basis of actual weights furnished by the consignee. But complainants vehemently assert that they encounter great difficulty in securing the return of overcharges collected by defendant, and if this is true as a rule, the defendant should immediately alter its practice in this regard. Delays in the settlement of overcharges have become a common source of complaint from all sections of the country, and a large portion of the correspondence of this Commission has reference to the adjustment, in an informal way, of claims of this character. It is our experience that these delays are mainly caused through the failure of railway officials to promptly dispose of such claims by either ascertaining which carrier is responsible for the excess or demonstrating to the claimant that no overcharge has been made. Many of these officials do not appreciate the full force of the fact that the retention of an overcharge has all the effect of unjust discrimination against the person from whom payment has been required, and when the refund of an excessive charge has been unnecessarily delayed for a considerable period, that the officials responsible therefor become fairly chargeable with wilful intention to violate the law.

As to the charge of unjust discrimination which we find sustained the defendant will be ordered to cease and desist, while it continues to deliver flat or uncompressed cotton in the city of New Orleans to any cotton press or any compress company before payment of transportation charges, upon the guaranty of such press or company to pay such charges on demand after such payment shall have been refused by said consignees, from refusing to make such previous delivery of flat or uncompressed cotton for complainants or other consignees to the Alabama Press or the Factors' Press in said city of New Orleans upon a previously executed and sufficient guaranty from the said presses or the owners thereof to pay on demand the transportation charges due on such cotton after payment thereof has been demanded of complainant or said other consignees and such payment has been refused; and said defendant will be further required to abstain from any discrimination whatsoever between complainants and other consignees using said Alabama or Factors' Press and

the consignees using other cotton presses in New Orleans for or on account of any refusal of the owners or managers of said Alabama or Factors' Press to pay on demand any sum as freight charges on cotton delivered to said presses, or either of them, in excess of such charges as may be legally due thereon at the time of such demand.



THE INDEPENDENT REFINERS' ASSOCIATION OF  
TITUSVILLE, PENNSYLVANIA, AND THE INDE-  
PENDENT REFINERS' ASSOCIATION OF OIL  
CITY, PENNSYLVANIA, V. THE PENNSYLVANIA  
RAILROAD COMPANY AND THE WESTERN NEW  
YORK AND PENNSYLVANIA RAILROAD COM-  
PANY.

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PETITION OF THE PENNSYLVANIA RAILROAD CO. FOR REHEARING.

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Report and opinion of the Commission filed Nov. 14, 1892.—Petition of  
Pennsylvania R. R. Co. for Rehearing filed Feb. 15, 1893.—Brief and  
affidavits in support of Petition filed April 13, 1893.—Briefs for com-  
plainants in opposition to Petition filed April 24, 1893.—Memorandum  
filed October 19, 1893.

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*James A. Logan*, for Pennsylvania Railroad Company,  
petitioner for rehearing.

*Mark J. Heywang*, for complainants, in opposition to petition  
for rehearing.

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MEMORANDUM.

By THE COMMISSION:

On November 14, 1892, the Commission reported its findings  
of fact and conclusions in this and two other cases, and thereupon  
issued an order, bearing the same date, by which the defendants,  
among other things, were directed and required to take action as  
follows, to wit:

“That said defendants be and they severally are hereby  
required to wholly cease and desist from charging or collecting  
any rate or sum for the transportation of the barrel package  
on shipments of oil in barrels over their respective roads or  
lines from the oil regions of Western Pennsylvania to New  
York and New York harbor points, or to Boston and Boston

points; or, on reasonable notice, promptly furnish tank cars to complainants and other shippers who may apply therefor for the purpose of loading and shipping oil therein to such New York harbor and Boston points as said shippers may direct; and that, on or before the 9th of January, 1893, said defendants notify the public accordingly by publication in their tariffs of rates and charges, pursuant to the provisions of section 6 of the Act to regulate commerce, and also file copies of said tariffs with this Commission as required by the provisions of said section. And defendants are further hereby directed and required to refund to the several parties legally entitled thereto, within 60 days after notice of this decision and demand thereof by such parties, all sums received by them for the transportation over their respective roads or lines of the barrel package on shipments of oil in barrels when the use of tank cars has not been open to shippers impartially, and the shipper claiming reparation has been thereby deprived of their use."

It was further stated in the order that "inasmuch as the amounts wrongfully received from complainants and others who may be entitled to such reparation cannot be ascertained from the evidence already taken, these proceedings will be continued for such further action or inquiry in that behalf as may become necessary."

Only one order was issued for all three cases.

On February 15, 1893, the Pennsylvania Railroad Company filed a petition for rehearing, reciting the first above quoted part of the Commission's order and claiming that the same, if intended to apply to it, was based on certain findings and conclusions of law relating to the special circumstances of the petitioner which it believes to be erroneous. The petition then proceeds to challenge the correctness of the following finding, also shown on page 11 of the report and opinion of the Commission:

"From this state of facts it appears that while about 450 tank cars of the Pennsylvania Railroad Company may be 'open to shippers indiscriminately' it is only upon the conditions of shipment to Communipaw for delivery there to the National Storage Company, and that the facilities owned by

this Storage Company for bulk shipment are not available to shippers in general."

The following statements in the report and opinion are also termed "findings" in the petition for rehearing and claimed to be error:

"The complainants . . . allege that 'if the demand for these cars is no greater than is stated it is because the Pennsylvania Railroad Company will not permit them to go to any other place on the seaboard at New York Harbor than Communipaw, and only there at the docks of the National Storage Company, which is allied to the Standard Oil Trust.'" (Report and Opinion, p. 10.)

"This Storage Company has facilities at Communipaw for unloading tank cars into bulk steamers or vessels, but these facilities are not open to complainants, and a witness (Confer) testified that in order to get oil shipped in bulk from Communipaw, the independent refiner has to sell it to the Standard Oil Company." (Report and Opinion, p. 11.)

Obviously, the first of these statements is only a recital of an allegation of complainants, and by reference to the report and opinion this will be found set forth in connection with allegations made in behalf of the Pennsylvania Railroad Company upon its application to submit additional testimony. As to the second statement, only the first portion can properly be termed finding; that which cites the testimony of a witness is certainly significant, but it is not so declaratory of fact that, standing alone, it should be given the weight of finding. Moreover, the facts set out in the finding first above quoted cover both of these minor statements, and the petition for rehearing, so far as it alleges errors in fact, may therefore be considered as directed only against that finding.

The Pennsylvania Railroad Company, some sixteen months after the cases had been argued, applied for leave to submit additional testimony. For reasons cited on pages 5 and 6 of our report and opinion, and as further shown by admissions of complainants' counsel in answer to such application and by the applicant's reply thereto, which are duly set out on page 10 of said report and opinion, the application to take further testimony was denied. We think that said application, under

the answer of complainants' counsel thereto, and the applicant's reply to such answer, was properly denied. The decision of these long pending cases should not, without stronger showing than was presented on the application, have been longer delayed. The fact is that the petitioner did not take advantage of its opportunities and put in its evidence at the proper time and in the regular way. As to the finding of fact in the petition for rehearing we hold, after careful re-examination of the evidence, that it was not erroneous upon the proof before the Commission.

The petitioner now comes, however, and declares its ability to establish as a matter of fact that, notwithstanding any evidence that was before us, this important finding was untrue, and presents in support of this assertion the affidavits of its general freight agent and the secretary of the National Storage Company. The petitioner is not now merely seeking after the close of testimony but prior to decision, to rebut evidence favoring the complainants' side of the case; it is attacking a finding of an authoritative body based upon that evidence, and which militates strongly against the legality of the petitioner's conduct as a common carrier. As shown by our report in these cases this carrier includes in its own equipment 1,130 of the 1,342 tank cars owned by railroads throughout the country, and it claims, without formal denial on the part of complainants, though there is some testimony in conflict therewith (Report and Opinion, p. 11), that it furnishes 450 tank cars, or such part thereof as may be necessary to meet demands therefor, to shippers indiscriminately, when the shipments are made to points on its own or affiliated lines of railroad. Compared with car facilities provided by other carriers its action in this respect, if its claim is well founded, is commendable. The stated desire of the petitioner is to show that its tank cars are and have been impartially furnished to all shippers to its New York Harbor terminus and other points reached by its own and affiliated lines, and that the facilities for delivery at that terminus are open to the use of all shippers without any discrimination whatsoever, and without the imposition of conditions upon the shipper in respect to the sale of oil or other disposition thereof. In

other words the petitioner contends that its action is and has been in line with the provisions of our order forbidding discrimination in the matter of facilities to shippers of oil. Our rules of practice provide for rehearing on proper showing, the petition is in form, and the affidavits filed in support thereof make out a prima facie case in favor of the petitioner's claim (*Proctor & Gamble v. Cincinnati, H. & D. R. Co.* 3 Inters. Com. Rep. 131, 4 I. C. C. Rep. 443); and the petitioner may be able to show by competent proof that the finding attacked in this petition is erroneous (*Riddle, Dean & Co. v. Pittsburgh & L. E. R. Co.* 1 Inters. Com. Rep. 773, 1 I. C. C. Rep. 490). Note should be taken, however, of the fact that the affidavit of the Secretary of the Storage Company in support of this petition is confined to the facilities of the Storage Company for "unloading oil by lighters in bulk or tank steamers." There is some proof in this case to the effect that tank oil carried to the seaboard is unloaded from the tank car into storage tanks, and pumped from the storage tank through a pipe into the bulk steamer. Whether the affidavit was intended to embrace the transshipment of oil by this method as well as by lighter does not appear.

We cannot infer from its petition that the carrier has any other object than to disburden itself of the charge of unjust discrimination which the finding certainly sustains, and we think, under all the circumstances, that it should not be denied the opportunity of correcting the record in this respect. Neither, in view of the fact that such a showing by the petitioner would put it in the attitude of observing the above-described portion of our order, do we see how such showing can be other than beneficial to the interests of the complaining independent shippers of refined oil.

The reply brief of complainants, after citing the testimony of Ramage and Motheral as strongly supporting the finding, in addition to anything testified by the witness Confer, states as to the compulsory sale of oil to the Storage Company, that Mr. Confer perhaps referred to a practice of that company, or of that company and the petitioner, "of buying up refined oil from the independent refiners of this region, through an agent kept here for years for that purpose, for shipment in bulk

over the Pennsylvania Railroad for delivery to the National Storage Company (Standard Oil Trust). In no other way did oil manufactured by the independent refiners go to that terminal in bulk for export. It was never claimed by complainants or any of them that the National Storage Company imposed an express or published condition that the independent refiner must sell his oil to the Standard Oil Company in order to get it transshipped in bulk to a bulk vessel. The express condition was unnecessary."

The complainants further allege against this petition that, "it being the established fact and not controverted by the respondent that the National Storage Company is an ally of the Standard Oil Trust, and that the respondent will not carry oil for export for complainants to any other point at New York Harbor but to this trust ally, what more need be said? Of course the independent refiners would not ship to such a terminal for export, nor use the alleged idle tank cars of a railroad that will go to no other than such terminal, no matter what the offered facilities of such a terminal are. The inland refiner who entrusts his oil to a storage company at the seaboard with a view to exporting, puts himself completely into the power of such concern. The exactions that may be unfairly imposed in individual cases for 'loss by leakage,' 'dumping and mixing for off color or off test,' 'cost of water-white oil for mixing,' 'tares,' 'tares guarantee,' 'commission on sales,' 'interest on goods until loaded and paid for,' 'incidental expenses,' and many other known matters of charge, may amount to a partial confiscation of the cargo. See reference to charges of this nature in printed exhibits, p. 4, and statement National Oil Company, p. 5."

Again, the complainants say that it is significant that these carefully prepared papers and affidavits speak only of conditions now existing; that they evidently speak of a situation that has been recently arranged, and that it would be more satisfactory if they showed when the change was made and gave assurance that the equal facilities would continue beyond the proposed investigation.

The petitioner will unquestionably feel bound to cover all of these matters in its proposed showing, and if such new

evidence shall result in the actual and satisfactory assurance to complainants and other independent refiners of the use, without any discrimination whatsoever, of a very large quantity of tank cars and the important and convenient terminal facilities for oil delivery and transshipment at Communipaw, it would seem that granting such leave to the petitioner will be doing the complainants a real and effectual service.

This Commission has not the power, even in a case of unjust discrimination in terminal facilities, to order the carrier to make a through route and through rate to another terminal, such, for instance, as Perth Amboy, in this case. The remedy lies in a different direction. We can order the unjust discrimination to cease, and if it is persisted in by a carrier, the law prescribes severe penalties for such perseverance.

We find on examining the claims for reparation which have been filed in this and the other two cases mentioned, that comparatively few shipments went to Communipaw, that is to say, Communipaw shipments represent only about 7 per cent of the total number to New York Harbor and Boston points, so that even if the petitioner shall be able to show that the finding referred to was wholly erroneous, such showing will not greatly affect these claims as a whole. We nevertheless desire to state our dissatisfaction with this method of practice. The proper time to put in evidence, and all the evidence, which parties are able to produce before the Commission, is before the case has been submitted. The new testimony should be carefully limited to the finding attacked in the petition and be taken in the form of deposition and filed within a limited time.

We now take up the error in law alleged by the petitioner. It is assumed in the petition for rehearing that the portion of our order which requires the defendants to cease charging for the barrel in barrel shipments, or, as an alternative, furnish shippers with tank cars for shipping oil to *such New York Harbor points as the shippers may direct*, is intended, among other things, to compel the petitioner to furnish its tank cars for shipments to New York Harbor points not reached by its own lines. This assumption is entirely erroneous. In this order, drawn with considerable care, the

defendants in all three cases are, as before stated, included within its provisions. This petitioner, one out of seven defendants, does not carry oil either in barrels or tanks to any other point on New York Harbor than Communipaw, nor does it engage with other roads in the through transportation of oil either in barrels or tanks to any other New York Harbor point. Some of the other defendants *do* reach and carry to other points on that harbor, but they *do not* carry to Communipaw. There was no more intention to compel the Pennsylvania Railroad and the Lehigh Valley Railroad to make a route to Perth Amboy than there was to compel the other defendants and the Pennsylvania Railroad to make connecting through lines to Communipaw. This we think should be evidenced by the terms of the order itself. We were dealing with existing routes and existing rates. Moreover, the report and opinion, on page 18, distinctly declares (with reference to the abrogation of certain through rates to Boston & Maine Railroad points) that the Commission has no power to order through routes and through rates. The provisions of the order would not be satisfied if the Pennsylvania, or any of the defendants carried oil by the barrel method over a through route composed of its own and another defendant's road, and charged for the weight of the barrel, but refused to allow its tank cars to go over the through route to the point where the barrel shipments were destined. But, as above set forth, the Commission is informed that the petitioning defendant does not carry oil either in barrels or tanks to any other point on New York Harbor except Communipaw. It is also proper to add, as matter of suggestion merely, that a serious question of unlawful discrimination might arise in case of refusal to receive and carry barrel or tank oil over a through route on which other commodities are transported by the connecting carriers.

Under existing circumstances, if the Pennsylvania Railroad Company furnishes tank cars to applying shippers to its New York Harbor oil terminal without discrimination, and the facilities at that terminal for the delivery of oil to consignees and bulk steamers are also provided and controlled without discrimination or prejudice as against any shipper or consignee,



—and this company declares its ability, and, upon leave being granted, its intention to show this,—we think it is discharging its duty in this respect under the requirements of our order.

We therefore decide on this petition for rehearing that the petitioner, the Pennsylvania Railroad Company, have leave to take testimony by deposition with sole reference, as indicated in this memorandum, to the finding on page 11 of our Report and Opinion, to wit:

“From this state of facts it appears that while about 450 tank cars of the Pennsylvania Railroad Company may be ‘open to shippers indiscriminately,’ it is only upon the conditions of shipment to Communipaw for delivery there to the National Storage Company, and that the facilities owned by this Storage Company for bulk shipment are not available to shippers in general.”

Provided, however, that such testimony by deposition be taken upon not less than ten days’ notice to complainants’ counsel and be filed in the office of this Commission on or before the 1st day of December next; and upon the further condition that the petitioner shall, prior to the taking of such testimony, publish in its oil tariffs the notification to the public required by our order of November 14, 1892.

This leave is granted solely for the purpose of affording the petitioner an opportunity to correct the record as affecting the finding above quoted, and for no other purpose.

THE F. SCHUMACHER MILLING COMPANY, AND ITS SUCCESSOR, THE AMERICAN CEREAL CO., V. THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *Defendant*, AND THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ST. LOUIS, KEOKUK, & NORTHWESTERN RAILROAD COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY, *Intervenors*.

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Complaint filed April 1, 1891.—Answers filed from May 7 to September 23, 1891.—Heard at Chicago, Ill., September 23, 1891. Proposed Findings and Arguments filed from October 23, 1891, to January 26, 1892.—Decided October 20, 1893.

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1. The fact that different rates and classifications are in force in different sections of the country will not of itself warrant an extension of the lower rate and classification to the section where the higher rate and classification are applied. There must be proof of unlawful discrimination or disadvantage, or of unreasonably high rates, to procure an order directing changes in classification.
2. Cost of service is only one of the elements to be considered in determining proper classification and relative rates for different articles. While the difference in cost to the carrier in transporting cereal products and flour is not in itself sufficient to warrant a higher classification upon cereal products, these products range higher in value than flour, and in the matter of volume of traffic afforded there is a very wide difference in favor of flour; and there are other conditions compelling a low rate upon flour which do not apply in the transportation of cereal products. It appears, moreover, that the complaining company controls the production of half the cereal products manufactured in this country and, under the present classification and rates, is an active competitor of other manufacturers of cereal products whose mills are located nearer to the points of destination involved in this case.
3. When an article of traffic does not move on account of burdensome rates, and the carrier is hauling a considerable number of empty cars in the direction such article would naturally move if accorded a lower rate, the carrier may be justified in carrying at a rate sufficient to induce the

movement of such traffic, provided no extra or additional charge is in consequence put upon other articles carried; but the fact that freight will furnish return loads for empty cars is not a reason for the reduction of rates on such freight when it does not appear that the rates are unreasonable.

4. A mixed carload rate for cereal products or for cereal products and flour that would have the effect of throwing out of the trade many competitors of complainant who manufacture only certain kinds of cereal products, and of centralizing the business in the hands of one or more dealers, should not be granted when, without it, no wrong is done to any one and the market is open to all competitors. To obtain the abrogation of a rule in a classification denying a mixed carload rate upon specified articles the rule should be shown unreasonable, unfair or unjustly discriminative.
5. The complaining company has shown no reason why roads using the Western Classification should adopt the Official Classification as to cereal products. Neither is there sufficient evidence in this case to justify an order directing the defendants to establish the mixed carload rate prayed for in the complaint. But this will not preclude the filing of another complaint based on other grounds, and raising the question of unreasonable or relatively unreasonable rates on cereal products.

*Oviatt, Allen & Cobbs*, for complainant.

*Thos. S. Wright*, for C. R. I. & P. Ry. Co.

*Britton & Gray*, for A. T. & S. F. R. R. Co.

*John W. Cary*, for C. M. & St. P. Ry. Co.

*J. W. Blythe & C. M. Dawes*, for C. B. & Q. R. R. Co., H. & St. J. R. R. Co., St. L. K. & N. W. R. R. Co. and K. C. St. J. & C. B. R. R. Co.

#### REPORT AND OPINION OF THE COMMISSION.

*McDILL, Commissioner :*

The demand of the complainant is that the Chicago, Rock Island & Pacific Railway shall change the classification and rate upon which it carries cereal products westward from Chicago by classifying such products with and carrying them for the rate charged for flour, and that the same rate shall be granted to a carload whether it contains a single product, or smaller quantities of several products.

The original and intervening respondents admit that the classification and rate on flour upon the railway lines using what is known as the Western Classification are different from

the classification and rate in use on the lines using what is known as the Official Classification, as alleged by complainant, and also admit that they do not grant a carload rate to loads of mixed products.

The reasons given by the complainant in support of and by the respondents against the claim will be considered hereafter.

#### FINDING OF FACTS.

1. Complainant, the F. Schumacher Milling Co., and the American Cereal Co., which as its successor is substituted as complainant, are corporations duly organized under the laws of Ohio for the purpose of dealing in all kinds of cereals and manufacturing the various products of such cereals, and their principal office and place of business is the city of Akron, in the state of Ohio.

2. The defendant, the Chicago, Rock Island & Pacific Railway, and the intervening defendants, the Chicago, Burlington & Quincy; Hannibal & St. Joseph; St. Louis, Keokuk & North Western; Kansas City, St. Joseph & Council Bluffs; Atchison, Topeka & Santa Fé; and the Chicago, Milwaukee & St. Paul Railroads, are common carriers engaged in the transportation of passengers and property between points in the States of Illinois, Iowa, Missouri, Kansas, Nebraska and Colorado, and are all subject to the requirements of the Act to regulate commerce.

3. Complainant manufactures and deals largely in pearl barley, crushed barley, cracked and rolled wheat, farina, farinose, buckwheat grits, buckwheat flour, hominy, corn meal, oatmeal, rolled oats and flour. Complainant has five mills at Akron; two flour mills, one corn meal mill, one barley mill and one hominy mill. It also has mills at Iowa City, Cedar Rapids, Rockford, Cleveland and Chicago. It annually consumes in all its mills from 14,000,000 to 15,000,000 bushels of grain, and, with the exception of flour, it manufactures about one half of all the cereal products made in the United States.

4. There are rival and competing manufactories of cereal products at Chicago, Kansas City, Indianapolis, Terre Haute,

Elgin, Massillon, Cedar Rapids, Muscatine, and other points, and these competitors make the other half of the product of the United States.

5. The original and intervening defendants are members of a certain association known as the Western Classification Committee, and that association has arranged for the members of the association schedules, classification, and rules for the carriage of articles of interstate commerce west of Chicago. Its classification, schedules, rates and rules were announced December 21, 1890, and the carriers adopted the same January 1, 1891, and they were practically in use prior to that time.

6. Under this classification pearl barley in sacks, cracked and rolled wheat in sacks at owner's risk, farina, buckwheat grits in sacks, hominy in sacks, oatmeal and rolled oats in paper sacks at owner's risk, are placed in the second class.

Pearl barley in boxes, barrels or kegs; cracked and rolled wheat in boxes, barrels and kegs; flour in paper sacks at owner's risk of waste and wet; buckwheat flour in paper sacks at owner's risk of wet and waste; buckwheat grits in boxes, barrels and kegs; hominy in boxes, barrels or kegs; cornmeal in paper sacks or boxes, and oatmeal and rolled oats in cotton sacks at owner's risk of wet and waste, are placed in the third class.

Flour in cotton sacks or boxes at owner's risk of wet and waste, in pails with covers well secured or in barrels; buckwheat flour in cotton sacks or boxes at owner's risk of wet and waste, or in barrels; cornmeal in cotton sacks or barrels; oatmeal and rolled oats in boxes or kegs at owner's risk of wet and waste, or in barrels or half barrels, are placed in the fourth class.

Pearl barley, cracked and rolled wheat at owner's risk, buckwheat grits and hominy in sacks, boxes, barrels or kegs, in carload lots, are placed in the fifth class. Farina is not mentioned in the carload classification. Farinose, not mentioned in the classification, is a product similar to farina, and crushed barley not so mentioned, is similar to pearl barley.

Buckwheat flour in carloads and all other cereal products not mentioned take the wheat tariff rate. The rate is lower

ian that granted to articles in the fifth class, and whatever the heat tariff rate may be at the time of shipment is the rate for the products last above named.

By a rule of the Western Classification carloads of mixed products do not take the rate of either product, but the shipper in each case pays the ordinary, less than carload, rate for the quantity of each product placed in the car.

7. Carriers by lines of railroad running east from Chicago and Mississippi river points and north of the Ohio and Potomac rivers are governed by the Official or Trunk Line Classification, and flour and cereal products are classified together and take the lower rate per carload. Mixed carloads are allowed a carload rate under the following rule:

"8 A. When a number of different articles of the same class are shipped at one time by one shipper to one consignee at one point of delivery in full carloads, they shall be taken at the rate per hundred pounds for *such class in carloads*. If the articles are of more than one class the carload rate and minimum carload weight for the article of the highest class shall be charged on all the articles that make up the carload."

8. In December, 1890, complainant shipped *via* Chicago to Colorado Springs, Colo., over the Chicago, Rock Island & Pacific railway,—

20 boxes and 42 barrels of Oatmeal, weighing 27,700 pounds, upon which the charge from Chicago was $54\frac{1}{10}$ cents per 100 lbs.....	\$150.13
and 10 boxes farinose, 10 boxes wheat and 5 boxes barley, weighing 3,300 pounds, for which the charge from Chicago was $\$1.46\frac{1}{10}$ per 100 lbs.....	48.25,
Making a total charge of.....	\$198.88
And in the same month over the same road <i>via</i> Chicago to Denver, Colorado, 250 kegs barley, weighing 24,700 pounds, for which the charge from Chicago was $95\frac{1}{10}$ cents per 100 lbs.....	\$235.14
and 50 boxes farina, 20 boxes farina and 1 box samples, weighing 3,300 pounds, for which the charge from Chicago was $\$1.72\frac{1}{10}$ per 100 lbs.....	56.83,
Making a total charge of.....	\$391.97.
And in January, 1891, complainant shipped <i>via</i> Chicago to Denver, over the Atchison, Topeka & Santa Fé Railroad,—	
105 barrels of flour, weighing 21,500 pounds, upon which the charge from Chicago was $35\frac{1}{10}$ cents per 100 lbs.....	\$ 76.97,
and 35 boxes wheat, 12 barrels of hominy, 10 barrels farinose and 1 barrel Mt. Sax, weighing 4,000 pounds, for which the charge from Chicago was $\$1.01\frac{1}{10}$ per 100 lbs.....	\$ 40.60,
Making a total charge of.....	\$117.57.

And in the same month over the Chicago, Rock Island & Pacific Railway *via* Chicago to Pueblo, Colo.,—

21,550 pounds of oatmeal for which the charge from Chicago was	
54 $\frac{1}{2}$ cents per 100 lbs.....	\$116.90.
900 pounds of wheat for which the charge from Chicago was	
\$1.46 $\frac{1}{2}$ per 100 lbs.....	18.16.
and 1,250 pounds of farina and farinose for which the charge	
from Chicago was \$1.72 $\frac{1}{2}$ per 100 lbs.....	21.58.
Making a total charge of.....	\$151.49.

And each of these several charges, so far as made upon cereal products, exceeded the charge upon an equal weight of flour by reason of said products being placed in a different class and charged a different rate from flour.

#### CONCLUSIONS.

There are two questions involved :

First, Should cereal products be carried westward from Chicago at the same rate as flour ?

Second, Should the rule of the western roads as to mixed carload lots be abrogated, and the same rate extended to mixed carloads as is given to a carload of a single product ?

The claim of the complainant involves a change of classification, with a view of affecting a change in rates, to be ordered by the Commission in what is known as the Western Classification, governing shipments west of Chicago. As to the change in classification proposed by the complainant, it may be remarked that there is no presumption in favor of the Official against the Western Classification. The fact of a difference in rate and classification establishes nothing of itself in favor of either rate or classification.

An approximation toward uniformity of classification, so far as it can be reached in justice to all interests, is generally conceded to be desirable.

Classification is recognized as a necessary method of adjusting the burdens of transportation equitably upon the various articles of traffic, in view of differing circumstances and conditions, and *but* for the necessity of such adjustment, considerations based alone on weight and distance of haul would probably determine rates, except as modified by competition. This method, while securing practical uniformity.

would probably deprive many articles which are now important factors in commerce of the benefit of transportation to distant points. A system of rate-making upon each article without classification, it is said, "has proved to be so cumbersome and inconvenient that the arrangement of freight into classes is deemed by the roads an essential part of rate-making, and is so treated by the Act to regulate commerce, which requires that the schedule of charges which every carrier must keep open to the public 'shall contain the classification in force.'" *Coze v. Lehigh Valley R. Co.* 3 Inters. Com. Rep. 460, 4 I. C. C. Rep. 559.

While the nearest approximation to uniformity of classification is desirable, all agree that great caution should govern attempts to bring it about. The Commission has said, "to force it at once was undesirable," and "while one dealer might be greatly benefited another might be ruined," and that "the final adjustment of a uniform classification must necessarily be the arrangement of a number of compromises." And it was said in *Pyle v. East Tennessee, V. & G. R. Co.* 1 Inters. Com. Rep. 770, 1 I. C. C. Rep. 473, that occasional inequalities of rate, and slight and occasional differences in the rates charged would not prove that the whole system is wrong and that "when comparison is attempted to be made of classifications and rates, different conditions of transportation cannot be ignored."

An attempt to reform a classification by a selection of isolated cases and single classes, and changing them without a study of the entire scheme, would be dangerous. The entire effect of a proposed change can only be known by comprehending the relation of each particular article or class to the combined scheme.

Therefore a complainant asking a change in classification, as in this case, with reference to a single group of articles, should be required to show a case of unjust discrimination or wrong done to procure a change.

Complainant, as a reason for the change asked for, claims that the value of cereal products does not greatly exceed that of flour. In reference to the place where values should be computed the parties differ. Complainant contends for the



value at Akron, the principal point of its manufacture, while respondents claim Chicago as the point, because the proof shows that complainants manufacture their products principally at Akron and ship them in bulk to agents at Chicago, who ship westward in carload lots to customers upon orders sent in by them.

From complainant's testimony the following tables of values of flour and cereal products estimated at Akron, Ohio, the point contended for by complainant, have been prepared, and are here set forth.

**STATEMENT OF COMPARATIVE VALUES OF FLOUR AND OTHER ARTICLES MILLED BY COMPLAINANT, AT WHOLESALE, BASED ON THE AVERAGE OF THE CURRENT PRICES AT AKRON, OHIO, ON THE FOLLOWING DATES, *viz.*: APRIL 3, 1891, AND SEPTEMBER 2, 1891.**

(Arranged from testimony of complainant.)

**THE PERCENTAGES SHOW THE INCREASE OR DECREASE FROM THE COST OF FLOUR.**

Flour .....	2½	cts. per lb.	
Pearl Barley.....	3½	" " " " " " "	an increase of about 31.½ %
Crushed " .....	4	" " " " " " "	45.½ "
Cracked Wheat.....	3½	" " " " " " "	18.½ "
Rolled " .....	3.7½	" " " " " " "	26.½ "
Farina .....	3½	" " " " " " "	22.7½ "
Farinose .....	4½	" " " " " " "	68.½ "
Buckwheat Grits.....	4½	" " " " " " "	54.½ "
" Flour .....	8	" " " " " " "	9.½ "
Oat Meal.....	3.08½	" " " " " " "	12.½ "
Rolled Oats and Avena.....	3½	" " " " " " "	23.½ "
Hominy .....	2.1½	" " " " " " "	a decrease " 15.½ "
Corn Meal.....	1.95	" " " " " " "	29.½ "

At the price named a carload of flour (30,000 lbs.) would be worth \$825, while the other articles would be worth more or less, respectively, as follows :

Pearl Barley .....	Worth \$262.50	More per car.
Crushed " .....	375.00	" "
Cracked Wheat.....	112.50	" "
Rolled " .....	215.00	" "
Farina .....	187.50	" "
Farinose .....	562.50	" "
Buckwheat Grits.....	450.00	" "
" Flour .....	75.00	" "
Oat Meal.....	101.25	" "
Rolled Oats and Avena .....	157.00	" "
Hominy .....	121.25	" "
Corn Meal .....	240.00	" "

The complainant admits that the average value of cereal products is about 25% greater than flour. The respondent claims that the difference amounts to 40%.

Farinose, upon complainant's showing, exceeds flour in value 68%, buckweat grits, 54%, while buckwheat flour falls to 9.1% excess of value, and corn meal shows 29.1% and hominy 15.9% less value than flour.

A table prepared from data found in this office is set forth in this report on page 78 showing the comparative rates prevailing on cereal products from Mississippi river points to Denver, 916 miles, and on similar articles from Chicago to New York, 912 miles, the western rates being made according to the Western and the eastern according to the Official Classification. The times chosen are April 1, 1891,—the time when this complaint was filed,—April 1, 1892, and the date when comparison was made, March 29, 1893. From this it is seen that at each date corn meal and hominy, the two articles falling in value below flour, have constantly taken the flour rate, or even a lower rate.

Therefore the question presented by complainant is, whether the other cereal products exceeding flour in value, the highest 68.2%, the lowest 9.1%, and giving an average excess in value of 33.4%, should take the *same classification*, and therefore the same rate, as flour, values alone being considered?

It is a conceded rule of classification that value, on account of enhanced risk and ability to pay a greater proportion of the aggregate return upon investment, may justify a higher classification, and in view of this rule the difference in values here shown is sufficiently great to justify the conclusion that the comparison as to value alone furnishes no sufficient reason for a classification with flour. Complainant also urges as a reason for granting its prayer that the actual cost of the service rendered in transporting cereals products does not greatly differ from the cost of transporting flour.

The nature of the service as well as the evidence in the case leads to the belief that, in this particular, the difference between flour and cereal products is not of itself any justification for a different classification; but this fact must be considered in connection with other conditions to be noted, and

from the combined situation we must seek to draw a just conclusion.

When we come to a consideration of the volume of business, there is a marked difference in favor of flour. The entire tonnage of cereal products is only about four per cent of the tonnage of flour, the ratio being as four to one hundred.

The evidence shows that at times the movement of empty cars westward from Chicago is very large, and that this is the case when flour and grain are moving eastward in large quantities; and complainant urges this fact as a reason for the classification of cereal products with flour.

The heavy tonnage of flour and grain eastward bound concentrates at certain periods large numbers of cars at Chicago, and it is not always practicable to obtain return loads for all of them at current rates. This may be one reason why cereals now have a relatively low rate. We find that none of the products are placed higher than fourth class, some in fifth class, some taking flour rate, and in one instance one product having even a lower rate than flour.

But the question is, whether the entire group of articles known as cereals products involved in the complaint should be carried at the flour rate. The complainant contends that the situation should result in granting to cereal products the rate for carrying flour, when such products move in the same direction as the empty cars. The outcome of this reasoning would be that until the return cars were all filled by such stimulation of movement every article moving westward should take the flour rate.

That a large movement of return empty cars may rightfully, under certain circumstances, justify a lower rate is undoubtedly true. When articles of traffic do not move on account of a rate which constitutes too great a burden and the carrier is moving empty cars in the direction in which such articles would naturally move at a lower rate, the carrier may be justified in carrying at a rate sufficient to bring about their movement, even at a rate barely remunerative. But no extra or additional charge in consequence can justly be put on other articles carried.

We therefore conclude that before complainant could main-

tain its contention it should show that the rate now charged is unreasonably high, or that the articles are now charged a rate practically prohibitory. The fact shown by tables accompanying this report that in a comparison of eastern with western rates, the excess charge on cereal products in the west over charges on cereal products in the east is not equal to the average excess of western over eastern rates, seems to prove that such products are enjoying exceptional advantages over the average articles of commerce moving in the two regions. Whether or not the general excess of westbound over eastbound rates is relatively too great, is (as we shall hereafter show) now undergoing investigation in another case pending before the Commission, and upon other considerations we conclude that the complainant is not discriminated against by the present rates, without at this time passing upon the question of whether the present rate on cereals is unreasonably high. Its relation to other rates does not seem out of proportion, upon the record made in this case. The fact that such articles do not move in considerable quantities is proof that the rate is not prohibitory. We, therefore, are unable to say, from the evidence before us, that the rate charged on cereal products now is unreasonably high, and it is not apparent from any evidence offered in this case that the rate is prohibitory in character and there is, as has been said, *some* movement of the articles.

The changed classification and rate, we think, could only be justified if, after full consideration of the situation and interests of competing manufacturers located at Kansas City, Terre Haute, Elgin and many other points, and its effect upon their business, it was made apparent that it would not injure or subject them to undue disadvantage. The territory served by the roads carrying eastward from Chicago may justify the rates and classification prevailing in the region traversed by their lines, while it may also be true that the circumstances and conditions prevailing in the territory served by the western roads are a justification of different classifications and rates on their lines. It must be manifest, however, that if present rates are unjust and unequal to the complainant, it would be entitled to a change giving it equal and just

rates without considering the effect of such change on competitors. In that case its advantage would result from its situation, of which competitors would have no right to complain.

It seems probable that the western classification was originally made because it was supposed to meet the demands and requirements of the region to be served. Presumably in the matter now under inquiry it has done so, for no complaint has come from the manufacturers of cereal products in that territory. If in two regions there are different modes of treatment, that different treatment is to be reached to a large extent by different rates. If this is the reason of the different rate, and this is claimed in the argument, and we think the situation justifies such a claim, there should be no change unless to relieve complainant from an unjust discrimination resulting from the differing classifications and rates, and to this situation we turn our attention.

The complainant, by virtue of a very large plant and numerous mills located at Akron and other points (See 3d Finding of Facts), controls about one half of the trade in cereal products. One witness said "We (the complainant company) acknowledge no competitor west of Chicago." Complainant manufactures about one half of all the cereal products made in the United States. It is probable that because of the magnitude of production by complainant the cost is greatly reduced.

The annual output of complainant's several mills is as follows:

Flour in barrels.....	275,000
Oatmeal    ".....	125,000
Rye         ".....	85,000
Barley      ".....	50,000
Other cereal products in barrels.....	65,000

Complainant's advantages in competition are obviously great and controlling to a large degree.

The remaining half of the product made in the United States is the output of manufactories located at Chicago, Kansas City, Massilon, Cedar Rapids, Muscatine, Terre Haute, Indianapolis, Elgin and other places, principally in the west.

It may be assumed that these competitors being nearer the western market procure grain at a less cost than complainant. The shipments of flour made by complainant are not made westward in very great quantity. It makes an occasional shipment but its specialty is cereal products. The competitors of complainant are equally with complainant interested in a proper classification of these products. It can scarcely be doubted that the classification has been to them a matter of careful consideration with reference to the business in which they are engaged.

In the case of *Bates v. Pennsylvania R. Co.* 2 Inters. Com. Rep. 719, 3 I. C. C. Rep. 447, it was held unjustifiable to change a classification when such change would materially injure an important industry, and a class of shippers who have at any given point built up an industry in reliance upon a continuation of the classification, unless the existing classification and rate is shown to operate injuriously to the complaining shipper and to give undue advantage to the other shippers.

In the case just cited two of the great lines serving the territory east of Chicago petitioned for a rehearing and upon reconsideration the Commission found "that the cost of service to the carrier, including terminal expenses properly chargeable as freight charges, is greater on the product than on the raw corn." The cost of handling the product being greater than that of handling the corn, and the corn being carried in train load lots, while the product was not so carried, were mentioned as justifying the different rate on corn from that on corn products.


The committee of expert railroad men who, some time since, in response to a general desire for uniform classification, reported and recommended a classification for all the railways of the United States, placed flour in barrels and sacks, at owner's risk; grain, flour in boxes, cracked and rolled wheat in barrels, and hominy and oatmeal in barrels, in the ninth class; cracked and rolled wheat, hominy and oatmeal in boxes, pearl barley in packages and farina in barrels, in the seventh class; while cornmeal was classified with and accorded the same rate as flour.

This classification, although never adopted, indicates the average judgment of practical railroad men that there is no demand in the nature of things for a classification which shall include flour and each and every one of the articles included in the general class known as cereal products.

It is like kinds of traffic under similar conditions of transportation which should have the same classification; and in this case, on account of material differences in value and volume of business, and differing conditions of transportation, and what seems to us a failure to show that the present rate and classification on the western roads work injustice to complainant, or are in any degree discriminative or preferential, we conclude that no reason has been shown why the western roads should abandon the Western and adopt the Official Classification as to cereal products. It may be that complainant's competitors in business derive some advantage from being nearer the grain supply and the western markets named by complainant, and thus procuring grain at less cost, but if so, this is a natural advantage of situation to which they are entitled. The complainant seems to be an active competitor in the region in question with the other manufacturers of cereal products. The great economies resulting from an extensive plant and the fact that, although much farther removed from the territory in question west of Chicago, it keeps up an active trade, show that complainant also has advantages. Both complainant and its competitors are entitled to immunity from any artificial lessening of their respective advantages by classification or other device.

Much that has already been said is applicable to the prayer of the complainant that cereal products should have the same rate as flour.

To reduce a given rate it should be shown to be unjust, unreasonable, or unequal. Plaintiff's contention is that cereal products moving westward should take the flour rate. The proper determination of the question raised requires a comparison of flour as an article of traffic with cereal products. It is well known that flour is generally treated as an exceptional article of transportation, there being, as it is claimed, special reasons for its taking a very low rate. These reasons are that



it is a staple article of almost universal consumption; that the original article, wheat, has both weight and low value; that it is produced in very large amounts in some parts of the country at considerable distance from a portion of the consumers; that its ratio of tonnage to cereal products is as one hundred to four; and that a very large surplus over what is necessary to meet the home demand is produced, which is compelled to seek a foreign market, and in doing so comes into sharp competition with flour manufactured abroad. These facts and the fluctuations of ocean rates, if the product shall be marketed, necessitates a very low rate upon flour, which has been put much below the class rates, and thereby it has taken what is technically styled a commodity rate.

The cereal products do not come into such general use as flour. They are not shipped abroad in such quantities. The testimony shows that complainant ships only an occasional carload to foreign markets.

The following table made from the Report of 1889 prepared by the Bureau of Statistics under the direction of the Treasury Department, shows the comparative value of the exports of flour and preparations from grain used for food from 1880 to 1889 inclusive:

Flour	1880.....	\$ 85,833.197
	1881.....	45,047.257
	1882.....	36,875.055
	1883.....	54,824.459
	1884.....	51,189.696
	1885.....	52,146.836
	1886.....	88,442.955
	1887.....	51,950.083
	1888.....	54,777.710
	1889.....	45,296.485
Products of grain or cereal products.		
In 1880	Corn meal.....	\$ 981,861
	All other products.....	2,439,098
In 1881	Corn meal.....	1,270,200
	Other products.....	1,443,580
In 1882	Corn meal.....	994,201
	Other products.....	655,143
In 1883	Corn meal.....	980,798
	Other products.....	987,829



In 1884	Corn meal .....	\$ 818,789
	Oat meal .....	771,471
	Other products .....	848,119
In 1885	Corn meal .....	816,459
	Oat meal .....	1,086,011
	Other products .....	780,855
In 1886	Corn meal .....	858,870
	Oat meal .....	755,978
	Other products .....	818,907
In 1887	Corn meal .....	705,848
	Oat meal .....	456,028
	Other products .....	672,488
In 1888	Corn meal .....	765,086
	Oat meal .....	180,488
	Other products .....	741,150
In 1889	Corn meal .....	870,485
	Oat meal .....	878,178
	Other products .....	780,549
These figures show the value of flour exported		
from 1880 to 1889 inclusive to have been.....		465,888,232
As against cereal products including corn meal		
for same period.....		22,644,098

The flour of the country is manufactured at Minneapolis, Duluth, and other points in the United States, and its movement to foreign markets, as well as a very large movement for home use, is in an easterly direction. The cereal products are very largely used at home, and they move along rail and water routes in almost every direction. The tonnage is therefore diffused and not concentrated, and necessarily does not upon any of the lines produce that volume of traffic which is one of the reasons for giving a low rate to flour.

Again, the record shows, what is otherwise a matter of general knowledge, that the territory principally served by the trunk lines, in which the Official Classification prevails, is engaged quite largely in rendering transportation service to manufacturing enterprises, while the western roads, governed by the Western Classification, are much more largely engaged in serving agricultural, mining and lumber regions, and the desire upon the part of the railways to serve the necessities of their respective territories may have led to a material difference in the basis of rates for the eastern and western regions. In the east the attempt has probably been to arrange rates so as to favor manufactured goods, while in the west there may

have been an incentive to favor the heavier articles and agricultural products. Whether equal and exact justice has been attained is a question under consideration on a complaint now pending before the Commission. In that investigation the whole subject in all its details can be fully considered, while in this case attention is called to a single group of articles, and no light is thrown upon the intricate relation of the question to the whole body of articles involved in an intelligent determination of the true relation of eastern and western rates. The fact that class rates are much lower on eastern than western lines is well understood. Tables are set forth (see pages 78, 79 and 80) which show at three dates,—April 1, 1891, the date of complaint, April 1, 1892, and the date of comparison,—the rates on cereals, class rates east and west, and the comparative rates both as to classes and the group of articles under consideration. They show the average excess of rates in western over eastern territory to be 151½%, and the average excess of rates on cereal products over western as compared with eastern roads to be 94%, and that since April 1, 1892, the average on cereal products westward has been reduced 9½%. Thus it is seen that no greater difference prevails in western rates on cereal products, as compared with eastern rates, but rather less than prevails as to the general body of articles moved. We therefore hold that such difference as to circumstances and conditions has been shown, in a comparison between flour and cereal products, as to lead us to decline making an order reducing the rates on cereal products to the rate upon which flour is carried.

The movement of flour in every direction from place of manufacture to market, mainly on and towards the seaboard and from coast to foreign markets, has been one of many conditions supposed to justify its low rate; and complainant having failed to show such similar conditions and circumstances attending the shipment of cereal products, the Commission does not feel authorized to grant an order extending the flour rate to cereal products.

## STATEMENT SHOWING RATES ON CEREALS.

ARTICLES.	FROM AKRON, OHIO, TO MISSISSIPPI RIVER (East St. Louis). MILES, 542.				FROM MISSISSIPPI RIVER (St. Louis) TO DENVER, COLO. MILES, 916.				FROM CHICAGO, ILL., TO KANSAS CITY, MO. MILES, 488.				FROM CHICAGO, ILL., TO NEW YORK. MILES, 912.				
	Rate per 100 lbs.	Rate per 100 lbs.	Pres- ent Rate.	Rate per ton per mille.	Rate per 100 lbs.	Rate per 100 mille.	April 1, 1892.	Present Rate.	Rate per 100 lbs.	Rate per 100 mille.	Rate per 100 lbs.	Rate per 100 mille.	Rate per 100 lbs.	Rate per 100 mille.	Rate per 100 lbs.	Rate per 100 mille.	
	April 1, 1891.	April 1, 1892.	Rate per 100 lbs.	Rate per 100 mille.	April 1, 1891.	April 1, 1892.	Rate per 100 lbs.	Rate per 100 mille.	April 1, 1891.	April 1, 1892.	Rate per 100 lbs.	Rate per 100 mille.	April 1, 1891.	April 1, 1892.	Rate per 100 lbs.	Rate per 100 mille.	
Rolled Oats.....	15	15	.0055	50	.0100	50	.0100	50	.0100	23	.0094	24	.0008			25	.0008
Oat Meal.....				50	.0100	50	.0100	44	.0086	23	.0094	24	.0008				
Hominy.....				50	.0100	50	.0100	44	.0086	25	.0102	24	.0008				
Buckwheat.....				50	.0100	50	.0100	50	.0100	23	.0094	24	.0008				
Flour.....				50	.0100	50	.0100	50	.0100	23	.0094	24	.0008				
Grits.....	15	15	.0055	50	.0100	50	.0100	44	.0086	25	.0102	24	.0008			25	.0008
Wheat.....				50	.0100	50	.0100	50	.0100	23	.0094	24	.0008				
Rolled Wheat.....				95	.0297	50	.0100	44	.0086	25	.0102	25	.0102				
Pearl Barley.....				50	.0297	95	.0297	70	.0153	25	.0102	25	.0102				
Cracked Wheat...				95	.0297	50	.0100	44	.0086	25	.0102	25	.0102				
Corn Meal.....				45	.0008	45	.0008	44	.0086	23	.0094	24	.0008				

## STATEMENT SHOWING CLASS RATES.

	MILES.	IN CENTS.					
		1	2	3	4	5	6
From Akron, O., to Miss. River (East St. Louis)	542						
Rates in effect April 1, 1891, per 100 lbs.		43	38	28	20	18	15
Present Rates, " "							
Rate per Ton per Mile		.0150	.0140	.0103	.0074	.0060	.0055
From Miss. River (St. Louis) to Denver, Col.	916						
Rates in effect April 1, 1891, per 100 lbs.		2.12	1.70	1.42	1.15	.95	
Present Rates, " "							
Rate per Ton per Mile		.0463	.0371	.0310	.0251	.0207	
Present Rates (in effect July 22, 1892), per 100 lbs.		1.80	1.35	1.12	.90	.70	
Rate per Ton per Mile		.0393	.0295	.0244	.0196	.0153	
From Chicago, Ill., to Kansas City, Mo.	488						
Rates in effect April 1, 1891, per 100 lbs.		75	60	42	30	25	
Present Rates, " "							
Rate per Ton per Mile		.0307	.0246	.0172	.0123	.0102	
From Chicago, Ill., to New York	912						
Rates in effect April 1, 1891, per 100 lbs.		75	65	50	35	30	25
Present Rates, " "							
Rate per Ton per Mile		.0164	.0142	.0110	.0077	.0068	.0055

Comparative Statement showing Rates on Cereals, per hundred pounds and per ton per mile in Official and Western Classification Territories.

ARTICLES.	MISSISSIPPI RIVER (ST. LOUIS) TO DENVER, COLO. WESTERN CLASSIFICATION, 916 MILES.						Chicago, Ill., to New York, N. Y. Official Classification, 912 Miles.	
	Rate April 1, '91		Rate April 1, '92		Present Rate.		Rate since April 1, 1891.	
	Rate in cents per 100 Lbs.	Rate per ton per Mile.	Rate in cents per 100 Lbs.	Rate per ton per Mile.	Rate in cents per 100 Lbs.	Rate per ton per Mile.	Rate in cents per 100 Lbs.	Rate per ton per Mile.
Rolled Oats	50	.0109	50	.0109	50	.0109		
Oat Meal	50	.0109	50	.0109	44	.0098		
Hominy	50	.0109	50	.0109	44	.0098		
Buckwheat	50	.0109	50	.0109	50	.0109		
Flour	50	.0109	50	.0109	50	.0109		
Grits	50	.0109	50	.0109	44	.0098	25	.0055
Wheat	50	.0109	50	.0109	50	.0109		
Rolled Wheat	95	.0207	50	.0109	44	.0098		
Pearl Barley	95	.0207	95	.0207	70	.0153		
Cracked Wheat	95	.0207	50	.0109	44	.0098		
Corn Meal	45	.0098	45	.0098	44	.0098		
AVERAGE.	61.2	.0134	53.7	.0116	48.4	.0105	25	.0055

The above table shows that the present average rate on cereals from the Mississippi river to Denver, Colo., under Western Classification, is  $23\frac{6}{11}$  cents, or about 94 per cent greater than the present rate from Chicago to New York, under Official Classification, an equal distance. Also, that the present average rate per ton per mile on cereals from the Mississippi River to Denver, Colo., is  $.0050\frac{1}{11}$ , or about 92 per cent greater than that for the same distance—Chicago to New York. Rates in the East remain the same, while in the West an average reduction of  $8\frac{2}{11}$  cents or more than 13 per cent is seen from 1891 to 1892 and  $5\frac{1}{11}$  cents or about  $9\frac{1}{2}$  per cent from 1892, to the present time. The rate on flour, Mississippi river to Denver, remains the same, while hominy shows a reduction of 6 cents or 12 per cent, and cornmeal 1 cent or  $2\frac{1}{10}$  per cent.

## SIMILAR COMPARISON OF CLASS RATES.

## RATES COMPARED IN CENTS PER HUNDRED POUNDS.

FROM MISSISSIPPI RIVER TO DENVER, COLO.. 916 MILES.				CLASSES.	FROM CHICAGO, ILL., to NEW YORK, N. Y., 912 MILES.	
Rates Effective July 22, 1892.		Rates in effect April 1, 1891 and 1892.			Rates in effect Since April 1, 1891.	
Per 100 lbs.	Rate per Ton per Mile.	Per 100 lbs.	Rate per Ton per Mile.		Per 100 lbs.	Rate per ton per Mile.
Cents.	Cents.	Cents.	Cents.		Cents.	Cents.
180	3.93	212	4.63	1.	75	1.64
135	2.95	170	3.71	2.	65	1.43
112	2.44	142	3.10	3.	50	1.10
90	1.96	115	2.51	4.	35	.77
70	1.53	95	2.07	5.	30	.66
				6.	25	.55
117½	2.56½	146½	3.20½	Average.	46½	1.08½

The above table shows that the average rate from the Mississippi river to Denver, Colo., under Western Classification, is  $70\frac{1}{2}$  cents or  $151\frac{1}{2}$  per cent greater than the present average rate from Chicago to New York under Official Classification

an equal distance. The average rate per ton per mile for the same territory west is therefore  $\$1.53\frac{7}{8}$  or 150 per cent greater than that for the corresponding territory east as above. Rates in general in the east remain the same, while in the west an average reduction of  $29\frac{1}{2}$  cents or about 20 per cent appears.

With regard to the question of allowing the same rate on mixed carloads which is given to carloads of a single product, it may be remarked that it is almost inextricably involved in the question of the rate. A rule which might work well when the load was composed of articles bearing the same rate would be very difficult to formulate where the different articles took differing rates. The questions, which rates should govern; whether the highest or lowest; whether the proportion of different articles should influence the carload rate; whether the mixed rate should follow the highest or lowest class rate,—would all be involved, and it would probably be found difficult to formulate an equitable rule which should fix the rate upon such a load.

The matter should, moreover, be considered upon the theory of complainant, which contemplates a common rate for flour and each one of the cereal products. That in such case an abrogation of the rule of the Western Classification as to mixed carloads would result in pecuniary benefit to the complainant cannot be doubted. Respondents, however, claim that such an order as complainant asks would be unjust.

The rule of the Official Classification, which complainant wishes adopted for western service, reads as follows:

“8. A. When a number of different articles of the same class are shipped at one time by one shipper to one consignee at one point of delivery in a full carload, they shall be taken at the rate per hundred pounds for such class in carloads. If the articles are of more than one class, the carload rate and minimum carload rate for the article of the highest class shall be charged *on all the articles* that make up the carload.”

It is apparent that the adoption of this rule by the western roads would not greatly benefit the complainant unless the rate for transportation of cereal products is made the same as that

charged for the transportation of flour, for under the rule quoted above, with a differing rate on the articles making the load, the entire load would take the rate charged for the highest classed article which would be found as part of the load without reference to its proportion of the full carload.

The Western Classification denying a rate to mixed carloads of these products is defended by the respondents as necessary in order that the manufacturers of a single cereal product may have fair treatment and be allowed to compete in the market. It is claimed that, as the complainant manufactures all the cereal products, while his competitors manufacture, as a rule, one or more, but not all the articles, to grant a mixed carload rate would enable complainant to crush out all competition on the part of those who make only one or two of the products in controversy.

This is illustrated in the case of oatmeal in this manner. There are mills which manufacture oatmeal alone. A dealer would not usually wish to order a full carload of oatmeal if he could purchase a part load on as favorable terms. He would be required to invest less capital, and would get quicker returns from his investment, if he could buy a smaller quantity than a carload of oatmeal, and if allowed to ship a mixed carload of cereal products at a very low rate, or at the carload rate for a single product, he would purchase from a manufacturer that could give him a carload of the several products in smaller quantities, rather than from one who could only furnish a single article, so that the single product manufacturer could not so successfully engage in the trade. This would likely be the result, and counsel for complainant in argument virtually admits it, but alleges that such a result is one with which the carriers can and ought to have no concern, or at any rate that it is not within their province to remedy such an evil; that the states could not, without the consent of Congress, levy a tonnage tax to meet such a situation; that the railroads, as the creatures of the state, have no right to do what it could not do, and that the denial of the mixed carload rate is substantially the levy of a tax on tonnage, and as such is an unlawful interference with interstate commerce.

But it can hardly be successfully argued that a prohibition

against the states, intending to keep them from interfering with interstate commerce, can apply to a question involving the proper method of regulation of interstate commerce by the Federal government.

It is undoubtedly true that neither the Commission nor carriers are charged with any parental oversight over localities, or authorized to stimulate them with artificial helps to prosperity. But when a method of regulation would have the effect of throwing many competitors out of the trade, and centralizing it in the hands of one or more dealers, it would not be permissible if another method, without doing wrong to any one, would have the effect of leaving the market open to all competitors; for it is undoubtedly true that both the law and good business principles favor all fair competition. The rule is simply a limitation put upon the extension of the carload rate, and should be proved by complainant to be unfair, unjust and discriminative, if its abrogation is sought.

Complainant urges that the "rates, classifications, schedules and rules of defendants are so oppressive, unreasonable and unjust that it is wholly prevented from shipping any products except flour, oatmeal and rolled oats, from Chicago to any points in Iowa, Nebraska, Missouri, Kansas and Colorado, and especially to the cities of Denver, Colorado Springs and Pueblo, in the state of Colorado."

This is denied by the defendants, and they say that giving to this complainant the advantages asked by it, would be to give it a rate from Chicago to Denver, 97 cents per 100 lbs. better than is given those shipping small lots to Denver, and a proportional advantage would be given on shipments to other western points, resulting in serious injury to the business of the smaller shippers. It is said that complainant, if granted its prayer, could ship from Chicago to Denver 5,000 pounds pearl barley in boxes and barrels, and 15,000 pounds cracked wheat in boxes and barrels, making a carload, at 55 cents per 100 pounds, being the carload rate on flour; while a manufacturer of pearl barley alone, shipping from Chicago to Denver 5,000 pounds pearl barley in boxes and barrels, would pay the third class rate, \$1.52 per cwt., which is 97 cents more per cwt. than the rate complainant demands.



There is thus brought into question the relation of rates between mixed carloads of cereal products, and less than carload shipments of a single cereal product. But upon this important matter of regulation, namely, the preservation of proper relations between the differing kinds of shipments above mentioned, there has been no evidence offered. The proper relation of rates, if not preserved, introduces into transactions in transportation confusion and discrimination; and whatever may be the facts with regard to the rates now charged complainant on mixed carloads, it has not, in making out its case, offered any evidence nor furnished the Commission with any data upon which a comparison of such rates can be made. Without, therefore, passing upon the question raised in such a manner as to determine it upon its merits, we hold that in this case there has been no sufficient evidence to justify the order as to mixed carloads asked by complainant. This conclusion is reached, however, with the reservation that it does not preclude the Commission from entertaining another complaint against the rates on cereals based on other grounds, and raising the question either as to the reasonableness of such rates in themselves, or as to their relation to other similar rates.

BLANTON DUNCAN V. THE ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY, THE ATLANTIC & PACIFIC RAILROAD COMPANY, AND THE SOUTHERN CALIFORNIA RAILROAD COMPANY, KNOWN AS THE SANTA FÉ SYSTEM.

BLANTON DUNCAN V. THE SOUTHERN PACIFIC COMPANY AND THE LOUISVILLE & NASHVILLE RAILROAD COMPANY.

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*Decided November 8, 1893.*

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1. The remedy of a party for injury to goods shipped resulting from delay, detention, loss, breakage, rotting or other deterioration or damage, not attributable to a violation of any provision of the Act to regulate commerce, is by appropriate action in the courts.
2. Where a contract is made with a shipper by a carrier, member of a through line, for shipment of goods over the line at a less than the published lawful rate charged shippers in general, it is not a violation of the Act to regulate commerce for the delivering carrier to exact payment of the full lawful rate before delivery. Where, however, the shipper did not enter into the contract wilfully for the purpose of securing a rate which he knew, or by the exercise of reasonable diligence might have known, to be illegal, but was an innocent party to it and made the shipment on the faith of the rate named, the courts seem inclined to hold (and it is a matter for their determination) that justice to the shipper requires that the goods be delivered on payment by him of the amount specified in the contract.
3. There is no necessary connection or relation between the rates on traffic of the same kind or class transported between the same points in *opposite directions* over the same road or line, and the fact that such rate in one direction is materially higher than that in the opposite direction does not, as in case of hauls over the same line in the *same direction*, establish *prima facie* the unreasonableness of the higher rate. This is especially true where the hauls are of great length.
4. The rates charged on "household goods" will not be declared unlawful on the mere fact that as a condition of granting them the defendants require the shipper to release all claim for damages in case of loss to the amount of \$5.00 per 100 pounds, or \$1,000.00 per carload of 20,000 pounds, there being no proof showing that such rates are unreasonable in view of said limitation. In cases of loss, the shipper's remedy is at law, and the question of the reasonableness or validity of a contract limiting the carrier's liability is to be determined in the courts *on the facts in each case*.
5. Unless within the authorized exceptions to the general rule of the statute, discriminations in charges upon like shipments of the same com-

modities based solely upon the purpose or "business motive" of the shipper are unlawful, whether effected directly or indirectly by methods of classification.

6. Under the Western Classification and tariff there are two west bound carload rates from Mississippi river points to Pacific coast terminals on goods termed "Emigrants' Moveables" (including "household goods"), one a general class rate and the other designated a "commodity" rate and less than the general rate; the latter rate is published as being open to "intending settlers only," but in practice it is given to shippers indiscriminately, and does not appear to be unreasonable in itself. *Held*, (1) That there is neither propriety in, nor necessity for, retaining in the classification and tariff either the two rates, or the statement in connection with the commodity rate that it is open to "intending settlers only," as their intention can only serve to mislead the public and afford opportunity for the practice of favoritism and unjust discrimination as between shippers; (2) That the west bound rate on "Emigrants' Moveables" (including "household goods") from Louisville to Los Angeles should not be in excess of the amount of said commodity rate thereon.
7. While the circumstances and conditions in respect to the work done by the carrier and the revenue earned are dissimilar in the transportation of freights in carloads and less than carloads, and a lower rate on carloads than on less than carloads is, therefore, not in contravention of the statute, yet the difference between the two rates must be *reasonable*.
8. The agreement of the Trans-Continental Association on file with the Commission is not on its face a "contract, or agreement or combination," for the "pooling of freights" or "division of earnings" between different and competing railroads, such as is declared unlawful by section 5 of the Act to regulate commerce.

*Blanton Duncan* for complainant.

*Britton & Gray* for Atchison, Topeka & Santa Fé Railroad Company and affiliated companies.

*James C. Martin* for Southern Pacific Company.

*Edward Baxter* for Louisville & Nashville Railroad Company.

#### REPORT AND OPINION OF THE COMMISSION.

*CLEMENTS, Commissioner:*

These two cases were brought by the same complainant, Blanton Duncan, and as they raise similar, and to some extent identical, questions, may be considered together.

The case (No. 270) against the Atchison, Topeka & Santa Fé Railroad Company, the Atlantic & Pacific Railroad Company and the Southern California Railroad Company (which are known as the "Santa Fé System"), relates to a shipment by complainant over the roads of defendants in January, 1889, of a carload of "household effects" from Louisville, Ky., *via* St. Louis, Mo., to Los Angeles, Cal., and the subsequent shipment in September of that year of a "carload of household goods, containing a large portion of the same effects" back from Los Angeles over the same route to Louisville. It is alleged that the charge for the transportation of the carload from Louisville to Los Angeles was \$263.00, and from Los Angeles back, \$350.00, and that this was a "discrimination against complainant and the locality (whether Louisville or Los Angeles is not stated), and a violation of the 3d section of the Act to regulate commerce." It is also charged, that on the eastbound shipment the goods were in transit six or eight days longer than is usual for the passage of cars over that route and about eight days longer than the transit of the westbound carload, and were received by complainant at Louisville in a badly damaged condition—the damage being estimated at about \$1,000.00.

In the case (No. 271) against the Southern Pacific Company and the Louisville & Nashville Railroad Company, complaint is made in reference to a shipment by complainant on January 12, 1889, of a carload of goods over the roads of defendants from Louisville *via* New Orleans to Los Angeles. As to this shipment, it is alleged that "the Louisville & Nashville Railroad Company, through its agent, made a contract with complainant in writing, to transport from Louisville to Los Angeles a carload of '*emigrants' moveables*,' not to exceed 20,000 pounds in weight, for the sum of \$263, which was the rate for such carload for emigrants on the printed tariffs of the defendant companies" and "it was further agreed in said written contract, that complainant should ship in the same carload his furniture, mirrors, pictures and household effects generally, and some hams, lard, apples, butter, eggs, cheese, etc., as a part of his said emigrant moveables, without becoming subject to any further demand or claim,

because they were of a different and lower classification, than household effects;" that "in pursuance of said contract the Louisville & Nashville Railroad Company received and shipped the said effects which were received in Los Angeles on February 1st by the Southern Pacific Company and on notice thereof the complainant gave to the Southern Pacific Transfer Company the \$263.00 in payment of the freight;" that thereupon, the furniture was delivered, but the Southern Pacific Company refused to deliver the provisions, etc., claiming that it was a mixed carload and demanding an additional sum of \$128.10 as freight on the provisions, etc., and on complainant's refusal to pay the additional freight held said provisions, etc., until after March 14, 1889; that complainant, about March 8, engaged a firm of lawyers to sue said railroad company for illegal conversion of the goods, and the agent of the company having heard of this requested complainant's lawyers to hold up proceedings, and thereafter, on March 14, wrote complainant that the company would surrender the goods without further payment of freight; that complainant then accepted the goods, with notice to the company that all damage resulting from their detention would be claimed, and that "from rotting and other causes an immediate sale was necessary, with damage to a large amount, which the company refused to pay." The complainant charges that the demand by the Southern Pacific Company of the additional freight charge was a "discrimination against him in violation of the Act to regulate commerce." In an amendment to the complaint in this case, it is further alleged, that the Southern Pacific Company by its tariff in combination with other railroads discriminated in 1889 between westbound rates charged for household goods from Louisville to Los Angeles and rates on such goods from Los Angeles eastbound to Louisville, the rate per carload westbound being \$263.00 and for the same classification and commodity over the same line eastbound, being \$350.00 per car; and that this is violative of section 3 of the Act to regulate commerce.

In the complaints in both cases the following additional allegations and charges are made:

1. That by the tariffs of the defendant carriers the rate on

"household goods" per 100 pounds for less than the carload of 20,000 pounds is \$3.95, both east and west bound, and the rate per carload of 20,000 pounds is \$263.00 and that this is unreasonable, in that it compels shippers to pay for a carload of 20,000 pounds even if the weight of the shipment is less than 10,000 pounds; that said carriers further exact, as a condition of granting said rates, a release by the shipper of all claim for damages for loss in excess of the amount of \$5.00 per 100 pounds, and that this also is unreasonable and a violation of the Act to regulate commerce.

2. That the defendant carriers are "in combination with other common carriers under the name of the Trans-Continental Traffic Association, under the rules of which they committed the violations of the Act," recited by complainant; and that "said combination is violative of section 5 of the Act," forbidding the pooling of freights and division of earnings of competing railroads, in that "it is a combination on the part of the carriers to pool and divide earnings effectively, by upholding the prices of freights among the different and competing railroads."

The defendants in their answers deny all the alleged violations of the law on their part and set up various matters of fact, which, so far as deemed relevant and established by the proof, will be stated and discussed in our findings of fact and conclusions.

The complainant submitted a motion in case No. 270, which is stated at the outset to be a motion "to *strike out the answer* of the defendants as irrelevant, flippant, and frivolous; as containing scandalous and libelous matter, and as in disrespect of this court" (Commission), specifying certain portions of the answer as subject to those objections. The motion concludes with a prayer "that the defendants be ordered to *reform their pleading*." The motion taken as a whole we consider to be in legal effect a motion to have the answer *reformed* by striking therefrom the alleged objectionable matter. Parts of the matter referred to (and which we deem it unnecessary to set forth), while doubtless provoked by the evident warmth exhibited by the complainant in his petition, were not in our opinion justified or proper to be inserted in

the answer in this case. The offensive averments made the basis of the motion are, however, surplusage, and the answer without reference to them puts in issue all the material allegations of the complaint; the parties have appeared (the determination of the motion as preliminary not having been insisted upon), have introduced their evidence, argued the case upon its merits and submitted it for our adjudication thereon, and an order at this time requiring the defendants to reform their answer by expunging therefrom the objectionable matter would only result in further delay. The matter referred to will be treated as stricken out and will not be considered in our determination of the questions presented. While under the circumstances we deem it inadvisable to issue a formal order granting the complainant's motion, it is proper to say, that the use of offensive personalities and statements in pleadings, when not essential to a full presentation of the pleader's case, should be carefully avoided and that in this case it meets with our disapproval.

In case No. 270 there is a motion, also, on the part of one of the defendants, the Atchison, Topeka, & Santa Fé Railroad Company, to strike from the file the deposition of the complainant, Blanton Duncan, taken at Louisville, November 22, 1890, on the ground as stated in the motion, that "reasonable notice of the taking thereof was not given respondent, as required by U. S. Rev. Stat. § 863, and Rule XII. of this Commission." The Rule XII. referred to is that contained in the "Rules of Practice" adopted by this Commission, June, 1889, which were in force at the time the deposition in question was taken. It provides that "when a case is at issue on petition and answer, each party may proceed at once to take depositions of witnesses in the manner provided by sections 863 and 864 of the Revised Statutes." Section 863 requires "reasonable notice" to be given in writing "to the opposite party or his attorney of record, as either may be nearest." The notice given by complainant was by registered letter addressed to "Robert Dunlap, Attorney, A. T. & S. F. R. R., Topeka, Kansas," advising him that the complainant and other witnesses would be examined before a notary public in Louisville on November 22, 1890, at 10 A. M. Dunlap was

not the attorney of record of the defendant, and if he had been we do not think the notice was "reasonable," as it was received by him at Topeka, a distance of 622 miles from Louisville, only two days prior to the time named for taking the testimony. But, it will be observed, Rule XII. invoked by the defendants only applies "when a case is at issue on petition and answer." By Rule IV. it is required that "a carrier complained against must answer the complaint made within 20 days from date of notice thereof." The defendants' attorneys, Messrs. Britton & Gray, acknowledged service of a copy of the complaint, September 6, 1890, but filed no answer until December 20, 1890, nearly three months after the expiration of the time prescribed by the rule for filing answers and about a month after the deposition in question had been taken. When the deposition was taken the cause was not at "issue on petition and answer," and the defendants were then and had been in default nearly two months, not having answered within the prescribed time. In cases of such default the following provisions of Rule XI. apply: "The petitioner or complainant must in all cases prove the existence of the facts alleged to constitute a violation of the Act, unless the carrier complained of shall admit the same, *or shall fail to answer the complaint.* . . . *In cases of failure to answer,* the Commission will take such proof of the charge as may be deemed reasonable and proper, and may make such order therein as the circumstances of the case may require." At the hearing the complainant offered himself for cross-examination on the matters contained in the deposition and the counsel for defendant availed himself of this offer, reserving the right to insist upon the motion. It will be seen that under the views which we take of the law applicable to the questions presented in this case, the facts testified to in the deposition and not elsewhere proved cannot prejudice the defendant in this proceeding. It is, therefore, unnecessary to decide whether under the circumstances above detailed the motion should or should not be granted.



## FACTS AND CONCLUSIONS.

Where injury or damage is sustained by a party "in consequence of any violation" by a common carrier of the provisions of the Act to regulate commerce, it is made the duty of this Commission to issue "a notice to said common carrier to cease and desist from such violation or to make reparation for the injury so found to be done, or both." The injury to goods of complainant on their reshipment to Louisville in September, 1889, set up in case No. 270 against the companies forming the "Santa Fé System," does not appear to have been in consequence of a violation of any of the provisions of the Act. He testifies that the goods were received by him "in a badly smashed condition, the repairs on part of which cost him over \$600.00," and that the transit was seven days longer than on the original shipment of the goods west. The damage to the goods shipped January 12, 1889, to Los Angeles, mentioned in case No. 271, against the Louisville & Nashville and Southern Pacific Companies, appears to have resulted from "rotting and other causes" of the perishable part of the shipment during its detention by the Southern Pacific Company after its arrival at destination. The detention was because of the failure and refusal of the complainant to pay as freight on the goods so detained, a sum in addition to the amount specified in the bill of lading and in a contract made by complainant with the initial carrier, the Louisville & Nashville Company, for the entire shipment, embracing household furniture as well as the detained articles. The demand of this additional sum is charged by the complainant to have been a "discrimination against him in violation of the Act to regulate commerce." As will be seen from our discussion of the matter *infra*, this charge cannot, in our opinion, be sustained. Therefore, in this case, also, the damage complained of cannot be made the basis of an order of reparation as being "in consequence of any violation of the Act." The remedy of a party for injury to goods shipped resulting from delay in transit, detention, loss, breakage, rotting or other deterioration or damage not attributable to a violation of any provision of the Act, is by proper action in the courts. *Loud v. South*

*Carolina Railway Company*, 4 Inters. Com. Rep. 205, 5 I. C. C. Rep. 529. The complainant, it is proper to say, does not ask for orders of reparation from this Commission, and has instituted suits in Court for the recovery of his alleged damage in both cases.

We will now consider the contention of complainant (to which we have just adverted), that the demand by the Southern Pacific Company of the additional freight charge on what we have denominated the perishable part of the shipment "was a discrimination against him in violation of the Act to regulate commerce." The Louisville & Nashville Railroad Company by its agent contracted with the complainant to ship a carload, not to exceed 20,000 pounds in weight, of household furniture and goods as "emigrants' moveables" from Louisville *via* New Orleans to Los Angeles, over its own road and that of the Southern Pacific Company, for \$263.00, with permission to embrace in said carload apples, bacon, lard, etc. The rate designated as a commodity rate on "emigrants' moveables" from St. Louis and New Orleans (Mississippi river points) to Los Angeles under the west-bound tariff of the Trans-Continental Association was \$215.00 per carload of 20,000 pounds. The rate of \$263.00, which the Louisville & Nashville Railroad Company agreed to charge complainant, was a combination of the local rate from Louisville to St. Louis with the \$215.00 rate from the latter point on. This rate was the lowest possible on any combination of rates by any route from Louisville to Los Angeles the combination on New Orleans (*via* which the goods were shipped) being \$288.00, or \$25 more. The Southern Pacific Company, after making out an original bill for \$288, based on the combination on New Orleans, reduced it to \$263.00, which the complainant paid. The furniture and household goods were delivered, but the apples, bacon, lard, etc., were detained as not being "emigrants' moveables," and a separate bill of \$122.10 was made out therefor, which the complainant refused to pay. Thereupon a correspondence was had between the Southern Pacific and the Louisville & Nashville, which resulted in an order from the Louisville & Nashville Company directing the Southern Pacific to charge up the \$122.10 against

the Louisville & Nashville Co. The Southern Pacific Co. then delivered the goods to complainant (except the apples, which had been sold as perishable and accounted for) in, as he alleges, a damaged condition resulting from the detention. The rate of \$263.00 given complainant by the Louisville & Nashville Company was the westbound rate on "emigrants' moveables," and it appears that the articles detained by the Southern Pacific Company did not belong to that class of goods as defined in the current western classification. The charge for those goods of \$122.10 appears to have been in accordance with the regular published tariff, and the Louisville & Nashville Company recognized this by having that amount charged to it in its settlement with the Southern Pacific. From these facts it does not appear that the Southern Pacific Company discriminated against the complainant in making the additional charge, but only demanded (as the law required) the regular published tariff rates on such shipments, and which were, or should have been, charged all shippers alike. If this rate was in itself reasonable (as to which there is no evidence *pro* or *con*) its exaction was no violation of the Act to regulate commerce. On the contrary, the Louisville & Nashville Company would seem to have violated the Act both by a discrimination in favor of complainant in charging him less than the established tariff rates charged shippers in general and by a deviation from those rates. The complainant would, also, have been chargeable with a violation of law if he "knowingly and wilfully" obtained the transportation of his goods "at a less than the regular rates then established and in force on the line of transportation." (Sec. 10, Act to regulate commerce). It is proper to say in this connection that, while the demand of the full legal rate and detention of the goods for its enforcement by a carrier cannot be held to be a violation of any provision of the Act to regulate commerce, the question of the lawfulness of such detention, where the shipper is an innocent party to the contract, and not *in pari delicto* with the contracting carrier, will arise in a suit at law for the recovery of the goods and damages for their detention and is one for the determination of the courts, and not within the cognizance of this Commission.

Demand by the terminal or delivering carrier, in cases of through shipments over lines composed of two or more roads, of a greater amount of freight charges than is specified by the initial carrier in the bill of lading or contract of shipment, appears to be of common occurrence and is a matter of almost constant complaint to this Commission. It seems to be the rule on the part of carriers in such cases to detain the goods, if payment be not made. The consignee is thus left the option of paying the extra charge, no matter how unlawful or unreasonable, or of being deprived for an indefinite period of the goods, which he often urgently needs in his business or for other purposes. If payment be made and the amount paid prove to be an "overcharge," the consignee is then compelled to seek repayment from the carrier and this is generally found to be a matter of great difficulty, involving much correspondence and many references, back and forth, from one railroad official or department to another, lasting ordinarily for months and sometimes for years. The trouble and delay incident to such claims are so great and vexatious as to preclude the consignee from attempting to obtain satisfaction where, as is generally the case, small amounts are in question. While for the most part the sum in each case may be small, the instances are so numerous, that in the aggregate they involve a large and material amount. The shipment is made on the faith of the rate named by the initial carrier and in cases of merchandise shipments the extra charge always lowers the margin of profit on the goods and doubtless frequently causes the transaction to result in actual loss. The practice (as it may be termed from its frequency) of "overcharging" is a widespread evil which calls for a remedy. Where the demand by the delivering carrier is for an amount other than the regularly published rate filed with this Commission, it is made unlawful by section 6 of the Act to regulate commerce, and if done "wilfully" is declared in section 10 to be a misdemeanor punishable "upon conviction thereof in any District Court of the United States within the jurisdiction of which such offense was committed by a fine of not to exceed \$5,000.00." The time, expense, and trouble which are required in prosecutions under this clause of the statute and the

difficulty in making proof of the criminal intent, are so great in comparison with the amount which may be involved in any one overcharge as to render such prosecution as a general rule impracticable. Moreover, it is not to be believed that overcharges are resorted to by railway companies "wilfully" and systematically as a means of evading the law. The remedy, in our opinion, lies in the hands of the carriers and consists largely in adopting measures to prevent mistakes in the rate named to the shipper.

It is difficult to understand why mistakes in through rates should be of such frequent occurrence, and why, by the exercise of ordinary diligence, they may not be avoided. If the tariffs, classifications, and rules of the railway companies or associations, are so uncertain or complex and confusing that even a railroad agent, whose special duty it is to know them accurately, cannot advise shippers with certainty what the rates are, then either a simpler, more certain, and less perplexing system, should be adopted, or else agents of a higher order of intelligence should be employed. If the agents of the roads cannot readily understand the tariffs and classifications, how can a shipper be expected to do so? A system of tariffs and classifications unintelligible to shippers defeats the end and object of the provisions of the interstate commerce law and rules of this Commission thereunder requiring the posting and publication of rates for the information of the public.

If the contract for shipment be for a greater than the authorized rate, it is manifestly not only a violation of law by the carrier, but also an imposition upon the shipper, who, it is to be assumed, would not knowingly agree to pay such rate. In a case of that kind there is no ground, legal or equitable, for the enforcement of the contract. Where the rate specified in the contract is less than the established legal rate, and the shipper "knowingly and wilfully" obtains the transportation of his property at this illegal rate, he can, of course, acquire no rights under the contract; but, where the shipper has not, or is not chargeable with, this guilty knowledge and intent, a different rule has been laid down in the case of the *Mobile & Ohio Railroad Company v. Dismukes*, decided by the Supreme

Court of Alabama, December 27, 1891 (4 Inters. Com. Rep. p. 200). The shipment involved in that case was from Cairo, Ill., *via* Mobile, Ala., over the through line formed by the roads of the Mobile & Ohio and Mobile & Birmingham Railroad Companies, to Sunny South, a station on the latter road. The value of the goods was about \$40.00 and the freight charge named in the bill of lading delivered to the shipper was \$5.44. The charge under the tariff of rates filed with this Commission, it is stated in the opinion, would have been \$29.30. On the arrival of the goods at Sunny South, the consignee, Dismukes, tendered \$5.44, the amount specified in the bill of lading, and demanded delivery. This demand was denied, the agent of the Company claiming the established rate of \$29.30. The consignee brought suit before a justice of the peace for the value of the goods and recovered judgment. On appeal by the company, the judgment was sustained in the Circuit Court and finally affirmed by the Supreme Court of the State. The illegality of the contract appears to have been relied on as a defense by the company. The following is an extract from the opinion of the Supreme Court in the case:

"The Mobile & Ohio Company agreed and bound itself to carry this consignment to Sunny South, Ala., and there deliver it to Dismukes, for a certain compensation. That company has no right, under the law and its tariff of rates adopted, approved, and promulgated as by law provided, to enter into any such contract; and so far as the company is beneficially concerned in it, so far as the contract might otherwise be relied on by the carrier against the consignee, it is void, as being in the teeth of the law of Congress, as the same has been put into practical operation, upon the carrying business of the company. But it by no means follows that the consignee has no rights under it, or, indeed any less or other right than would have been his had the rate set down in the bill of lading been the approved rate for the transportation. It nowhere appears that either the consignor or consignee knew that the stipulated rate was different from the approved rate. It is not in the contemplation of the Interstate Commerce Law that persons dealing with common carriers should

be held to a knowledge of what their published schedules of rates contain. These schedules are not part of the law which all men are held to know. . . . It is only when the shipper knowingly contracts for a rate differing from that therein prescribed that his act is denounced as unlawful and punished as a crime. The motive of this legislation, moreover, is the protection of persons dealing with common carriers. Its primary purpose is to prevent a resort on the part of carriers to the undue advantages which accrue to them from the circumstances of their relations to persons having need for their services. . . . To allow the carrier to draw the shipper, entirely ignorant of the schedule of rates approved by the commission, into a contract of affreightment, upon which the goods are delivered and carried, at a stipulated rate which the shipper can afford to pay,—as in this instance, about 12½ per cent of the value of the property,—and then refuse to deliver the shipment to the consignee, except upon payment of a rate which he cannot afford to pay,—in this instance, 75 per cent of the value,—and upon which the property would not have been shipped at all, would be to put a construction on the law of Congress which its terms do not require or justify, and which would defeat the purposes which actuated its enactment. True it is that the contract here is one which the Mobile & Ohio Company had no right to make. True it is that its execution on their part involved a crime. But the act of the shipper in entering into it is not, in the absence of knowledge on his part of the schedule rate, tainted with criminality, or violative of any provision of the interstate commerce act. He is not *in pari delicto* with the contracting carrier; and he is entitled to the protection of that principle of law which enforces such a contract in behalf of the innocent party to it,—a principle which we conceive to be logically sound and thoroughly settled upon authority. See *Tracy v. Talmadge*, 14 N. Y. 162, and numerous later cases, which are cited and discussed in a *note* to that case as reported in 67 Am. Dec. 153.”

(See also authorities cited in footnote, 4 Inters. Com. Rep. 200, 201.)

In cases of through shipments at through rates over lines operated by several carriers, each successive carrier knows that the transportation over its road is under a contract with, or at a rate named by, the initial carrier, and it would seem that a system may be adopted (if it does not already exist) by which each carrier, before forwarding the shipment, may know what that rate is, and that the payment of overcharges as a condition precedent to the delivery of the goods might be avoided. What we have said in this connection is intended as suggestion and for the purpose of invoking the serious consideration and prompt action of carriers in reference to a matter of general and almost constant complaint.

As it appears from our statement of the allegations of the complaints, it is claimed in substance in both the cases that the charge by defendants of \$350.00 for the transportation over their respective lines of a carload of "household goods" from Los Angeles east to Louisville, while only \$263.00 is charged on a carload of goods of the same kind and classification from Louisville over said lines west to Los Angeles, is in violation of section 3 of the Act to regulate commerce, which forbids the giving of undue or unreasonable preferences or advantages as between persons, particular descriptions of traffic, and localities. In case No. 270 against the "Santa Fé" line, this complaint is confined to complainant's shipment of household goods from Louisville to Los Angeles in January, 1889, and their shipment back in September of that year, and in case No. 271 against the Louisville & Nashville and Southern Pacific Companies, it relates to shipments in 1889 of "household goods" in general. Under the Western Classification (which is applied to this traffic) "household goods" and what are termed "emigrants' moveables" (which embrace "household goods" and other articles hereinafter named) in carloads are classed 'B' and the class rate on them from Louisville to Los Angeles and from Los Angeles to Louisville is the same both ways, \$350.00. On complainant's shipments from Los Angeles to Louisville, he was charged this rate, it being the only east-bound rate between those points applicable to his shipments. On shipments west, however, from Louisville to Los Angeles, there is also what is



called a "commodity" rate on "emigrants' moveables" and this rate, as heretofore shown, amounted to \$263.00 per carload. The complainant's goods were shipped west under this rate on "emigrants' moveables." The difference between the two rates is \$87.00, and the goods shipped by complainant west were of the same kind and would come under the same classification as those shipped by him east.

"Emigrants' Moveables" are defined in the Western Classification as the "property of *intending settlers only*," and the terms apply (according to that classification from which we quote) to "household goods; second-hand farm machinery and vehicles; livestock, not exceeding ten (10) head; trees and shrubbery; lumber and shingles (not to exceed in the aggregate the equivalent of 2,500 feet of lumber); fence posts (not to exceed 250 in number); or a portable house; and property *included in the outfit of intending settlers*, but does not include doors, sash, blinds, provisions, grains (unless intended for seed or for feeding animals while in transit (general merchandise, nor any articles intended for sale or speculation." The testimony is that the commodity rate on "emigrants' moveables" west bound was adopted for the purpose of assisting and stimulating *emigration* westward to the Pacific coast and territories and thus increasing the business of defendants. While this rate was, doubtless, primarily made for the use of "intending settlers" or emigrants only, in practice (according to the evidence) it is given to shippers indiscriminately, without inquiry as to whether or not they are emigrants and without reference to the intent with which the shipment is to be made. The complainant was allowed this rate, although, as he testifies, he was not an emigrant or "intending settler." It is, therefore, practically a rate open to shippers in general. There are, then, two rates open to shippers generally on "emigrants' moveables" west bound—the class rate of \$350.00 per carload and this commodity rate of \$263.00 per carload. There is in the tariff in connection with both rates a limitation as to valuation in case of loss or damage—as to the former \$5.00 per 100 pounds and as to the latter, \$1,000.00 per car. The carload being 20,000 pounds, \$1,000.00 per car would be at the rate of \$5.00 per 100

pounds on a full carload. There being no apparent substantial advantage in taking the class rate of \$350.00, it seems evident that the commodity rate of \$263.00 will (if made known to them) be the only rate used by shippers and that practically there will be but one rate on "emigrants' moveables" west bound.

Commodity rates on "emigrants' moveables," lower than the class rates, appear to have been in force on these west-bound shipments from as far back as our records extend, 1887—how much farther we are not advised—to the present time, with the exception of the period from January 16 to October 23, 1888, and Mr. Smurr, General Freight Agent of the Southern Pacific Company's Pacific System, states that the "result desired to be brought about by these special rates" was "the maximum movement of emigrants' moveables and emigrants' things to the Pacific coast states and territories;" and "that under said modified rates, the west-bound movement is, as compared with east-bound, as two to one—in other words, double the east-bound movement." From this it may be inferred that in his opinion these rates have accomplished, to some extent at least, the desired result and have been beneficial to the roads. The rate of \$263.00 is about 26 per cent of the valuation of \$1,000.00 per car stipulated for by the roads in case of loss or damage, and, on the basis of the distance from Louisville to Los Angeles *via* St. Louis (about 2,397 miles over the Louisville, Evansville, & St. Louis road and the Atchison, Topeka, & Santa Fé System), it yields a rate of over a cent per ton per mile. It is also in evidence that "the class of goods that go west under the term 'emigrants' moveables' on the average are of materially lower value than are those shipped from the Pacific Coast, and the insurance risk is consequently less."

In view of the foregoing facts, which tend to show that the commodity rate of \$263.00 is not unreasonable in itself and is satisfactory to the roads, and also in view, particularly, of the practice of giving this rate to shippers indiscriminately (which is testified to by the officials of defendants) we can see no necessity for, or propriety in, retaining in the tariff and classification the class rate of \$350.00 west-bound or the

statement that the commodity rate is for "intending settlers only." It can only serve to mislead those who consult the tariff and classification and afford opportunity for the practice of favoritism or unjust discrimination as between shippers.

Unless within the authorized exceptions to the general rule of the statute, discriminations in charges upon like shipments of the same commodities based solely upon the purpose or "business motive" of the shipper, are unlawful whether affected directly or indirectly by methods of classification.

The rate designated as a "commodity" rate has been in force a large number of years; it amounts to about 26 per cent of the limit of valuation of a carload in case of loss or damage; it yields a rate per ton per mile of *over a cent* for the long distance of 2,397 miles; and the action of the roads in practically opening it to shippers in general would seem to indicate their approval of it as a reasonable general rate. Our conclusion is that there should be but one rate (which must be open to all and so published) on the classes of goods designated as "emigrants' moveables" (which include "household goods") from Louisville westward to Los Angeles, and that that rate should not be in excess of the commodity rate of \$215.00 per carload from Mississippi river points, which, added to the rate from Louisville to St. Louis, amounts to the \$263.00 rate, which was given the complainant on his shipments west.

The complainant was not discriminated against in being allowed on his shipments west, to Los Angeles, the lowest available rate, and there was no discrimination against him on his shipments east to Louisville, as he was charged the general rate exacted of all shippers. His complaint in reference to the disparity between the rates charged him on his east and west bound shipments, respectively, is not properly one of unjust discrimination under the third section of the Act to regulate commerce, but rather calls in question the reasonableness of the higher rate. The claim is in substance, that the rate of \$350 eastward is unreasonable in view of the fact that the rate over the same line and between the same points

westward is only \$263. This fact alone is relied upon to support the charge. The two rates have no necessary connection or relation, and the fact that a rate over a road or line in one direction is materially higher than the rate on the same class of traffic over the same road or line and between the same points in the opposite direction does not, as in case of hauls over the same line in the same direction, establish *prima facie* the unreasonableness of the higher rate. This would appear to be especially true where the hauls are of as great length as those now under consideration. It is moreover in evidence, as remarked above, that the "west-bound movement of the traffic termed 'emigrants' moveables' is double the east-bound movement," and the goods shipped west as "emigrants' moveables" are "materially lower in value" than those shipped east. It may be conceded that the much greater volume of the traffic moved west than east is to some extent attributable to the lower rate west, but the tide of emigration is naturally from a comparatively old and thickly populated country like the east to a new and sparsely settled country like the west. No evidence as to the unreasonableness of this rate in itself has been offered.

In connection with the commodity rate on "emigrants' moveables," as before remarked, it is specified in the tariff that "the valuation shall not exceed \$1,000 per car," and the class rate on "household goods" (embraced in "emigrants' moveables") is given upon condition of release by the shipper "to a valuation of \$5.00 per 100 pounds, in case of loss or damage." If the release be not made to these valuations, a higher rate is charged. The complainant contends that this is unreasonable and a violation of the Act to regulate commerce. The defendants in the case against the "Santa Fé" line in reply say that one purpose of this provision for limitation of their liability in case of loss or damage was the "protection of the carrier against overvaluation of property lost or injured, in cases where the carrier has not and cannot obtain knowledge or information as to the real value of the property and is placed at the mercy of shippers" in this respect. According to the weight of authority, a common carrier can make no contract protecting itself against liability for its own

or its servants' negligence, but may, by special contract with the shipper, *reasonably* restrict its common-law liability in *other respects*. Accordingly it is held that "a carrier may state a *reasonable* limit to the sum for which he shall be held accountable in case of loss, but cannot where this sum is understood to be an undervaluation of the goods thereby evade his full accountability as an ordinary bailee." (Schouler, Bailments & Carriers, § 457; *South & North Alabama R. Co. v. Henlein*, 52 Ala. 606, 23 Am. Rep. 578; Chitty, Cont. 692; *Hart v. Pennsylvania R. Co.* 112 U. S. 331, 28 L. ed. 717; 2 Redf. Railways, 103, note a.) In *Hart v. Pennsylvania R. Co.* cited above, it is held that such a contract will be upheld "as a proper and lawful mode of securing a *due proportion between the amount for which the carrier is responsible and the freight he receives*, and of protecting himself against extravagant and fanciful valuations," and in *South & North Alabama R. Co. v. Henlein*, that if the limit of liability fixed in the contract "be greatly disproportionate to the real value" of the goods shipped and "*the amount of freight received*, it would be unjust and unreasonable," but "if the limit was intended to adjust the measure of liability to the *reduced rate of freight charged* and to protect the carrier against exaggerated or fanciful valuations," it will be sustained "as the measure of the carrier's liability." As stated at the outset of this opinion the remedy of a shipper for loss or damage is by appropriate action in the courts. In such action, the validity of a contract limiting the carrier's liability must be determined by the application of the law to the *facts in each case*. A contract unreasonable in view of the value of the shipment and the rate charged for its transportation would not be upheld, and the shipper would not be estopped by such contract from claiming and recovering his actual damage. The question presented for our consideration, however, relates, not to the validity of the limitation as to value, but to the reasonableness of the rate charged in view of that limitation. While the value of the service of transportation and the extent of the carrier's risk are measured by, among other things, the value of the property transported, and this is an important factor in rate making, it is to be noted that as shipments of goods

of the same kind or class vary greatly in value, for the same weight, some being many times more valuable than others, a uniform rate per hundred weight for any commodity or class of traffic cannot bear the same proportion to the value of each shipment of such goods. The carrier can only be expected in establishing uniform class or commodity rates to take into account the estimated average value of shipments of the class or commodity to which the rates are applied. There is no proof whatever, showing or tending to show that the limitation of value complained of is below the average value of shipments of "household goods," or that the rates in question are unreasonable in view of that valuation. Moreover, while the value of the property transported is an important element in rate making, there are others, such as the cost of service, net revenue of the carriers from the traffic involved, character of the goods as being perishable and liable to breakage, and other matters. We do not feel warranted to declare the rates under consideration unlawful on the mere fact of the release as to value required by the defendants.

The charge in both complaints as to the disparity between the carload and less than carload rates is confined to those rates as applied to "household goods" shipped from Louisville to Los Angeles. The less than carload rate is compared with the carload rate of \$263.00, which, as we have seen, is the commodity rate on "emigrants' moveables" west-bound. No less than carload rate is specified in the classification and tariff in connection with either the class rate of \$350.00 on "emigrants' moveables" or the west-bound commodity rate thereon of \$263.00. The less than carload rate is stated only on "household goods" and it is a class rate. It was in January, 1889, \$3.95 per 100 pounds, and the carload rate was \$350.00, on the minimum carload of 20,000 pounds, or \$1.75 per hundred pounds. Under these rates the less than carload rate was about 125 per cent higher per 100 pounds than the carload rate, and at the former rate the charge on 9,000 pounds would amount to \$355.00, a little more than the carload rate of \$350.00 on 20,000 pounds. These rates appear to have been maintained until April 11, 1893, when there was established per hundred pounds on shipments

Classification.	Class.		Number of classes the less than carload is higher than the carload.
	C. L.	L. C. L.	
Official.....	2	1	One.
Southern.....	6	4	Two.
Western.....	B	1	Six.

It appears from the above that under the Western Classification, which is applied from Mississippi river points to the traffic now under consideration, household goods in less than carloads are placed six classes higher than when shipped in carloads, while under the Official and Southern Classifications there is a difference of only one and two classes. The rates stated above as now in force on carloads and less than carloads of household goods from Louisville to Los Angeles are governed by the Official Classification from Louisville to St. Louis, and by the Southern Classification from Louisville to Memphis, and by the Western Classification from those cities on to Los Angeles, and they illustrate the difference in the proportions between carloads and less than carloads resulting from the differences in classifications, as will be seen from the following tables giving the rates to St. Louis and Memphis under the Official and Southern Classifications and thence on under the Western :

## LOUISVILLE TO LOS ANGELES VIA ST. LOUIS.

	Classification.	C. L.		L. C. L.		Percentage of excess of less than carload over carload rates.
		Class.	Rate.	Class.	Rate.	
Louisville to St. Louis.	Official.	2	34	1	40	About 17%
St. Louis to Los Angeles.	Western.	B	148	1	320	About 116%
Through Rate.			182		360	

## LOUISVILLE TO LOS ANGELES VIA MEMPHIS.

	Classifica- tion.	C. L.		L. C. L.		Percentage of excess of less than car- load over carload rates.
		Class.	Rate.	Class.	Rate.	
Louisville to Memphis.	Southern.	6	25	4	85	40%
Memphis to Los Angeles.	Western.	B	148	1	320	About 116%
Through Rate.			178		355	

While there may be reasons for higher rates in the territory subject to the Western than in that subject to other classifications, it is not apparent why the disparity between the carload and less than carload rates on "household goods" should be so much greater.

We have been considering above the less than carload *class* rate as compared with the carload *class* rate on "household goods." As there is no less than carload rate corresponding, or given in connection with the commodity rate of \$263.00 on "emigrants' moveables" westbound, it would seem to follow that when shipped in less than carloads they take the regular less than carload rate. If that be so, and the less than carload rate on "Emigrants' Moveables" (which embrace other articles besides "household goods") be the same as on "household goods," the disparity between the two rates on "Emigrants' Moveables" westbound will be greater than that above shown in connection with the rates on "household goods." The commodity rate of \$263.00 on a carload of 20,000 pounds amounts to \$1.31½ cents per 100 pounds, which is only about 37 per cent of the less than carload rate per 100 pounds of \$3.55 on household goods. Under these rates, the shipper whose "emigrants' moveables" weigh 7,400 pounds would be charged about the same amount as one whose goods of the same kind weigh 20,000 pounds. It is also to be noted that not only the weight but the value of shipments is to be considered in determining the reasonableness of rates, and the aggregate value



of 20,000 pounds of goods will, except in rare cases, be much greater than that of 7,400 pounds or 9,750 pounds of goods of the same class or kind.

In the case of *Thurber v. New York Cent. & H. R. R. Co.*, 2 Inters. Com. Rep. 742, 3 I. C. C. Rep. 473, it was held that the transportation of freight at a lower rate in carloads than in less than carloads is not in contravention of the Act to regulate commerce and that the circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar and may justify a *reasonable* difference in such rates. The differences between the rates for carloads and less than carloads on the grocery articles in question in that case were under the facts established by the testimony declared to be unreasonable. That testimony was voluminous and related, among other things, to the average cost of handling and loading the freight in carloads and less than carloads, respectively, and of its transportation, unloading, and delivery; to the relative earnings from carloads and less than carloads; to the relative number and tonnage of carloads and less than carloads; to the movement of empty cars over the lines of the carriers complained against, and to the cost of many of the articles in question to the seaboard jobbers and the profit arising from the business. In the present cases there is no proof except as to the difference between the carload and less than carload rates. It is questionable whether the difference in the cost of service and other conditions incident to the two modes of shipment is so great as to justify a rate on less than carloads more than twice as high as that on carloads. "Household goods," it is specified in the Western Classification, are not to be shipped "for sale or speculation," but even if this be carried out in practice, an unreasonable disparity between the carload and less than the carload rates on those goods in favor of the former would be none the less an unjust discrimination against the shipper under the latter. It is manifest, if they be shipped as articles of merchandise, that the small dealer would be absolutely precluded by the existing disparity in rates between small and large shipments from engaging in the business, and the field would be left to the exclusive occupancy of the large dealer.

The importance of maintaining a reasonable relation between carload and less than carload rates on the same commodity is seen from the fact that any material difference between them in favor of the larger shipments must result in altogether debarring small dealers from participation in the trade. It may conduce to the convenience and interest of the carrier that shipments of certain kinds of traffic be made in carload lots, but, as is said by the Commission in the Second Annual Report, "carriers in making rates cannot arrange them from an exclusive regard to their own interests, but must respect the interests of those who may have occasion to employ their services, and subordinate their own interests to the *rules of relative equality and justice which the Act prescribes.*"

An examination, however, of the entire Western Classification and tariff of rates thereunder discloses the fact that the difference between the carload and less than the carload rates on many other articles (most of them articles of merchandise) is as great or greater than that between those rates on "household goods;" and not only the defendants in the cases under consideration but many other carriers not before us as parties defendant are interested in all these rates. In view of these facts, and especially the further fact above adverted to that no proof has been made on which a definite conclusion can be reached as to what difference between the rates in question will be reasonable, we deem it advisable to leave this matter open for future consideration and determination, when all the parties in interest may be heard and the whole subject thoroughly investigated.

There remains to be considered the charge made in both cases, that the defendants, as members of the Trans-Continental Traffic Association, are in a "combination with other carriers" under the rules of that association "to pool and divide earnings effectively by upholding the prices of freights among different and competing railroads." The complainant contends that this alleged "combination is violative of sec. 5 of the Act to regulate commerce." That section of the statute makes unlawful "the pooling of freights of different and competing railroads," or the division "between them of the aggregate or net proceeds of the earnings of said railroads or any part thereof."

As we understand the above allegation of the complainant, it is not intended to charge that there is an *actual* pooling or division of earnings between the defendants or other members of the Trans-Continental Association, but that the same result is accomplished "by upholding the prices of freights among different and competing railroads" as would be brought about by such pooling and division.

In the agreement of the Trans-Continental Association on file with the Commission, its object is stated to be "to promote harmony of action between the carriers parties to it, to the end that reasonable rates of charge for their respective services may be jointly made and maintained." By sections 1 and 2 of article V. of the agreement, it is provided "that the General Freight and Passenger Agents of the parties thereto shall constitute Rate Committees," which shall "make all rates and divisions and rules pertaining thereto," and that those "rates, divisions, rules, and regulations shall be promulgated by the Chairman for the guidance of the parties in interest and no deviation shall be allowed therefrom except" in certain specified cases. The "division" referred to, we understand to be that of through rates between the members of a through line. There is no provision in the agreement for an actual "pooling of freights" or "division of earnings" between the parties to the agreement. What was the practice under the agreement while in operation was not made to appear, but the witness examined on the subject testified, that "no such condition existed as pooling rates or allotments." It has not been shown by the agreement itself or other evidence that the object of the Association as stated in the agreement and the measures provided therein for fixing and maintaining rates constitute it a "contract, agreement, or combination" in violation of sec. 5 of the Act to regulate commerce, or that those measures, if carried out in good faith for the purpose named, indirectly lead to the same result as the actual "pooling of freights" and "division of earnings" forbidden by the statute. In this connection it is proper to state, that on Dec. 31, 1892, notice was given by the Chairman of the Trans-Continental Association that the Association had ceased opera-

tions except in the winding up of past business, and its existence appears to have then terminated.

It is directed that an order issue requiring the defendants to forthwith alter or amend their classification and tariff in conformity with our conclusion herein, so that there shall *not* be two west-bound rates on "household goods" and "emigrants' moveables," including "household goods," and that one rate, *open to all shippers and so published*, be put in force on "household goods" and "emigrants' moveables," including "household goods," from Louisville westward to Los Angeles, and that said rate be not in excess of the present commodity rate on "emigrants' moveables" of \$263.00 per carload.

THOS. V. CATOR V. THE SOUTHERN PACIFIC COMPANY AND THE UNION PACIFIC RAILWAY COMPANY.

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Complaint filed October 8, 1892.—Answer filed October 23 and October 24 1892.—Agreed statement of facts filed May 10, 1893.—Briefs filed May 10, 1893, and October 20, 1893.—Decided November 10, 1893.

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Under the statute the defendants had a legal right to withhold or put into effect an open excursion rate to Omaha, and such right was not affected by the fact that open excursion rates, lower than regular rates of fare, had been in force over their connecting roads during the month previous. Comparison of the rates charged to complainant and others in July for transportation from San Francisco to Omaha and return with reduced excursion rates charged for the transportation of persons from San Francisco to Chicago and Minneapolis in June of the same year, does not of itself present a discrimination or preference which the Act to regulate commerce empowers this Commission to correct.

*Thomas V. Cator* for complainant in person.

*James C. Martin* for Southern Pacific Co. *John M. Thurston* for U. P. Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

*McDILL, Commissioner :*

The complainant alleges that he is an attorney at law, residing and having his place of business at the city of San Francisco, California; that the defendants are common carriers subject to the Act to regulate commerce; that said defendants have been guilty of unjust discrimination and have given undue and unreasonable preference in this, to wit: That in June, 1892, the Republican and Democratic parties held national nominating conventions at Minneapolis and Chicago, respectively, each being composed of delegates from the several states and territories; that to each of these conventions delegates from California were carried over the roads of the defendants at greatly reduced rates; that thereafter in July, 1892, the People's party held a national nominating

convention at Omaha, which was also composed of delegates from the several states and territories, and that the delegates from California thereto, thirty-six in number, including this complainant, applied to defendants for the same reduced rates as had been given to the delegates from California to the first above-mentioned conventions, but such application was refused, and they were compelled to pay the usual and full rates to Omaha.

The defendant, the Southern Pacific Company, admits that special excursion rates were in force from California points to Chicago and Minneapolis in June, 1892, and that said reduced rates were not in effect at the time the national convention of the People's party was held at Omaha. This defendant further says that the special excursion rates made in the month of June to Minneapolis and Chicago were not limited to delegates, but were open to the public at large; that they were put in force strictly according to the provisions of the Act to regulate commerce; that under said Act it would not have been lawful or proper to give complainant or the thirty-six delegates to the Omaha convention special reduced rates which were not open to the general public; that the said special excursion rates from San Francisco to Minneapolis ranged, according to the route selected by the person desiring the transportation, from \$67.90 to \$82.90, and that tickets were issued at said rates, good only for continuous passage going on trains to arrive at Minneapolis on June 5th and 6th, 1892, and limited on return to 30 days from date of sale; that the said special excursion rates from San Francisco to Chicago ranged according to the route selected by the person desiring transportation, from \$70 to \$85, and that tickets were issued at said rates, good only for continuous passage going on trains to arrive at Chicago on June 19th and 20th, 1892, and limited on return to 30 days from date of sale; that nothing in the Act to regulate commerce prevents carriers from making and issuing excursion rates and tickets as they may deem advisable, provided such rates and tickets are open to the public at large. The defendant, the Union Pacific Railway Company, filed a similar answer. It admits that the rates charged to complainant and others in July were about double

the special excursion rates charged from San Francisco to Minneapolis and Chicago in June; but says that the said special excursion rates to Minneapolis and Chicago were made upon a cash guarantee that not less than 150 tickets should be purchased at the reduced rate, whereas no guarantee for a greater number than 36 passengers was offered by the applicants for reduced rates to Omaha.

#### AGREED FACTS.

Counsel for the respective parties have agreed upon the facts in this case. The stipulation reads as follows:

It is hereby stipulated that the following shall constitute the agreed facts in this case in lieu of other evidence, to wit:

A state convention of the People's party was held at Stockton, California, June 1, 1892, at which 36 delegates were elected to attend the national convention of the People's party to be held at Omaha, Nebraska, on July 2, 1892. James J. Morrison was secretary of the state convention; Jesse Poundstone was secretary of the delegates elected to the national convention. It was desired to secure reduced rates for the delegates and such other persons from California as might desire to attend the national convention, and the matter of securing such rates was taken up by Mr. Poundstone and Mr. Morrison. The following correspondence on the subject was subsequently had by letters, copies of which are hereunto attached, *viz.*:

1. Letter from Mr. Jesse Poundstone to Mr. A. N. Towne, General Manager of the Southern Pacific Company, dated June 4, 1892.
2. Letter from Mr. A. N. Towne to Mr. Jesse Poundstone, dated June 6, 1892.
3. Letter from Mr. Jesse Poundstone to Mr. James J. Morrison, dated June 4, 1892.
4. Letter from Mr. James J. Morrison to Mr. Jesse Poundstone, dated June 6, 1892.
5. Letter from Mr. James J. Morrison to Mr. T. H. Goodman, General Passenger Agent of the Southern Pacific Company, dated June 6, 1892.

6. Letter from Mr. T. H. Goodman to Mr. Jesse Poundstone, dated June 7, 1892.

7. Letter from Mr. Poundstone to Mr. R. Gray, General Traffic Manager, Southern Pacific Company, dated June 7, 1892.

8. Letter from Mr. T. H. Goodman to Mr. J. J. Morrison, dated June 8, 1892.

9. Letter from Mr. T. H. Goodman to Mr. Jesse Poundstone, dated June 9, 1892.

10. Letter from Mr. Jesse Poundstone to Mr. T. H. Goodman, dated June 10, 1892.

11. Letter from Mr. T. H. Goodman to Mr. Jesse Poundstone, dated June 11, 1892.

12. Letter from Mr. E. A. Holbrook, General Traffic Agent of the C. & N. W. Ry. Co., to Mr. Jesse Poundstone, dated June 7, 1892.

13. Letter from Mr. W. D. Hitchcock, General Agent Union Pacific Railway Company, to Mr. Jesse Poundstone, dated June 11, 1892.

14. Letter from E. P. Vining, Chairman, T. C. A., to Mr. Jesse Poundstone, dated June 14, 1892.

There were no other negotiations or requests for reduced rates in addition to the letters above referred to. If the annexed letters amount to a sufficient request for reduced rates, such request was made. The officers of the railroad companies, defendants in the case, did not consider that there was such a number of passengers likely to attend the national convention as would justify making reduced rates for the occasion. The defendants did grant a reduced rate to the delegates and all persons attending the Republican and Democratic national conventions mentioned in the pleadings.

The substance of the letters referred to is that the Southern Pacific Company and the Union Pacific Railway Company were requested by Messrs. Morrison and Poundstone, representing the delegates from California to the Omaha Convention, to issue special rates from California points to Omaha upon the holding of the said People's party convention. In reply to such request, the General Agent of the U. P. Co.



advised Mr. Poundstone to take the matter up with the Southern Pacific Railway Company, the initial carrier from San Francisco. The Southern Pacific Railway Company in reply to Messrs. Morrison and Poundstone stated that as the proposition related to interstate transportation it would be necessary to have the request for special rates taken up by all members of the trans-continental association for action thereon.

#### CONCLUSIONS.

This complaint, filed on behalf of a class of persons carried under defendants' published passenger rate in July, 1892, alleges unlawful preference and discrimination in favor of another class of persons transported under a lower rate in June of that year. This allegation is based upon the fact that both classes purchased transportation over defendants' connecting railways for a similar purpose, that of attending national political conventions, and that the class charged the higher rate was refused the reduced rate allowed to the other class.

Passenger tickets of any kind must be offered impartially to all who accept the conditions on which they are issued, and the rates at which they are sold must be published. *Larrison v. Chicago & G. T. R. Co.*, 1 Inters. Com. Rep. 369, 1 I. C. C. Rep. 147; *Re Passenger Tariffs*, 2 Inters. Com. Rep. 445, 2 I. C. C. Rep. 649. The lower rate above mentioned was a special excursion rate, and the higher charge was the ordinary and regular rate of fare in force over the defendants' roads. There is no showing that the special excursion rates mentioned were not open to the public generally and sold impartially to all who chose to accept the conditions under which they were issued, or that the special rates were not put into effect and discontinued in the manner prescribed by law; and it must be assumed in this report that the defendants did, as averred in their answers, comply with the statute in these particulars.

Section 22 of the Act to regulate commerce as amended provides: "That nothing in this Act shall prevent . . . the issuance of mileage, excursion, or commutation passenger

tickets." To rule in this case that complainant and his associates were subjected to unjust discrimination or undue prejudice by the issuance of excursion tickets in June and the refusal to issue such tickets for a similar occasion in July, would be a notice to carriers that if they do issue excursion tickets for a given purpose, they lay themselves under obligation to issue them for a similar purpose whenever occasion offers or application is made. Congress intended by the provision in the 22d section to leave the issuance of these tickets free from such restriction. The special excursion rates in June were not limited to convention delegates or to any portion of the public, and the fact that they had been in force did not make it compulsory upon the carriers to establish a similar reduced rate in July upon application of persons desiring to attend another convention. Under the statute, the defendants had a legal right to withhold or put into effect an open excursion rate to Omaha, and such right was not affected by the fact that open excursion rates had been in force over their connecting roads during the previous month. The complaint does not attack the legality of the rates charged in July from San Francisco to Omaha and return, except by comparing them with the lower special and limited excursion rates in prior effect from San Francisco to Chicago and Minneapolis. This does not constitute a discrimination or preference which the Act to regulate commerce empowers this Commission to correct. The complaint must, therefore, be dismissed.

In what has been said we have endeavored to state the law governing this case. Nevertheless the question raised by the complaint is unique and merits more extended notice. As a matter of equity there seems to be considerable justice in the proposition, which results from the claim advanced by the complainant that if a carrier establishes an excursion rate on account of a particular occasion, it ought also to allowed reduced rates when, soon afterwards, a similar event takes place, unless it appears that the first excursion rate was unprofitable. Take this case as an example. The national conventions of the Republican and Democratic parties were held in June, 1892, and the national convention of the People's party assembled in the following month. Each of these conventions

was composed of a large number of delegates chosen from the several states and territories, and was also largely attended by party leaders and spectators. The defendants made low excursion rates on account of the conventions of the first named parties but declined to make a special rate for the People's convention, and this naturally resulted in a belief on the part of the Populists that they had been subjected to unjust discrimination and undue prejudice. The fact that the distinction was made between political parties also served to increase the bitterness of feeling. Special excursion rates are made by carriers with a view of increasing travel at particular times. The occasion may be a convention, a fair, a military or civic demonstration, a general election, a picnic, a prize fight, a journey to points of interest or resort, or through a section of country noted for its scenery. Whatever the reason which impels a carrier to put reduced rate tickets on sale for a limited period may be, so long as the tickets are open to all who desire to purchase them, the law does not question the propriety of making the reduced rates; on the contrary, the statute says in terms that this right of carriers shall be preserved. But in specially excepting excursion, mileage, and commutation tickets from any operation of the law, which, without such exception, might prevent their being issued, Congress sought as a prime object to protect the public interest. The exceptive phrase in the twenty-second section does not, however, provide against discrimination by the issuance of excursion tickets for one occasion and refusal to issue them on account of a similar event. It was supposed that the right to issue them would in itself be a sufficient safeguard against discrimination of this kind, and as a general rule this is true. This case is the first that has been instituted before the Commission wherein wrong is alleged to result from the issuance of special excursion tickets at one time and refusal to issue them at another. The general similarity of the three conventions, the large attendance at each of them, the absence of any proper desire on the part of the carriers to limit attendance at the Omaha convention, and their known and proper interest in stimulating business over their lines, make the reason for denial of the reduced rates in July somewhat obscure. The facts show that a guarantee of the sale of

at least 150 tickets was given for the June conventions, and that complainant and his associates furnished no guarantee that more than 36 passengers would travel under a reduced rate to Omaha in July. Ordinarily, it is important that carriers should have some definite idea of the number of persons likely to travel in case the excursion rate is established, but when there is to be a recurrence of great gatherings carriers frequently and safely rely upon the fact that travel to such assemblies has been considerable, and are guided in making reduced excursion rates by former experience. The refusal of defendants to issue reduced rate excursion tickets to the public on account of the Omaha convention may therefore have been a mistake which, in their own interest, these carriers will not repeat in the future. The fact remains, however, that as the law stands it gives the Commission no authority to order a carrier to cease and desist from discriminating between bodies of persons traveling at different times for a similar object by establishing a special excursion rate for one occasion and refusing to make any reduction whatever for the other. Whether the law should be amended in this respect is a question for Congress to consider.

While we are satisfied that there is no authority under the law for an order from the Commission, yet we feel compelled to express our belief that the importance of national conventions for the nomination of candidates for President and Vice President of the United States, the fact that they are called but once in four years, and, although held at different places, yet generally occur about the same time in the year, all point to the conclusion that a proper observance of the spirit of the law to regulate commerce, which seeks equality and condemns undue preferences and prejudices, and unjust and invidious discriminations, would grant excursion rates to each national convention for such purposes.

As these conventions are only held at stated periods, and usually about four years apart, such equal action upon the part of carriers of passengers would not likely result in any serious embarrassment or loss of revenues, and therefore would seem to us to be subject in equity and justice to the rule above outlined.

C. O. MORRELL, COMPLAINANT, V. THE UNION  
PACIFIC RAILWAY COMPANY, THE OREGON  
SHORT LINE & UTAH NORTHERN RAILWAY  
COMPANY, THE OREGON RAILWAY & NAVI-  
GATION COMPANY, DEFENDANTS.

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Complaint filed February 16, 1891.—Answers filed March 9 to May 18, 1891.  
—Heard at Spokane Falls, Washington, May 29, 1891.—Briefs filed  
September 9 to October 9, 1891.—Decided December 22, 1893.

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1. Rates maintained and which may be reasonable under the conditions existing in one section or part of the country afford no safe criterion by which to measure reasonable charges in other localities where the expense of operating a road and other conditions affecting transportation are widely different.
2. Rates and charges in force on lines of rival companies or on different branches or lines of the same company are entitled to consideration in connection with the question of reasonable charges for transportation services rendered under like conditions.

*Messrs. B. L. & J. L. Sharpstein* for complainant.

*Messrs. J. M. Thurston and W. W. Cotton* for defendants.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner*:

In this proceeding complaint was made against the Union Pacific Railway Company that it operated a railroad from Pullman, in the state of Washington, to Portland, in the state of Oregon; that its rate of charges, \$6.50 per ton—32½ cents on the hundred pounds—of wheat from Pullman to Portland was “unjust, unreasonable, and extortionate,” and that any higher rate than \$4 per ton—20 cents on the hundred pounds—of wheat in carloads from Pullman to Portland was unreasonable. The complainant asked that investigation be made, the reasonable rate ascertained and determined, and that the sum of \$2.50 per ton—\$48.11—should be awarded to him, that being the

amount paid in excess of 20 cents per hundred pounds on one carload of wheat shipped by him from Pullman to Portland, January 19, 1891.

The Union Pacific Company for answer denied that it operated any railroad between Pullman or Portland or that it operated any line or lines of railroad in the states of Oregon and Washington, and it appearing that the Oregon Short Line & Utah Northern Railway Company and the Oregon Railway & Navigation Company were proper parties to be named as defendants, they were so named, and a copy of the complaint herein was duly served on them.

The Oregon Railway & Navigation Company, thus made a defendant, answering the complaint, says that prior to August 1st, 1887, it owned and operated a line of railway between Pullman, Washington, and Portland, Oregon; that by agreement or lease dated January 1st, 1887, which became effective August 1st, 1887, all the road owned and operated by this defendant in the states of Washington and Oregon at the date of said agreement had been leased to the Oregon Short Line & Utah Northern Railway Company for a fixed rental in no way dependent upon the earnings of the leased property; that said Oregon Short Line & Utah Northern Railway Company had, at the time said agreement became effective, entered into the use and possession of all the railway lines owned by this defendant, and was at the time of the commencement of this proceeding, and still is, in the possession and use thereof; and that it, the Oregon Railway & Navigation Company, is not, and has not since August 1st, 1887, been engaged in operating or making rates for transportation or interested in the profits or earnings of any railway in the states of Oregon or Washington.

The Oregon Short Line & Utah Northern Railway Company, answering in obedience to the order of the Commission, admits that it operates a line of railroad from Pullman, Washington, to Portland, Oregon, by virtue of a lease from the owner, but denies that the rate charged, 32½ cents for the hundred pounds, is unreasonable, and avers that the rate of \$4 per ton—20 cents on the hundred pounds—prayed to be established would be unreasonable and unremunerative.

The questions in controversy being thus presented, the parties were heard and the investigation made at Spokane, state of Washington.

The facts ascertained and deemed to have a bearing on the questions thus presented for determination are:

1. The complainant, C. O. Morrell, is a farmer and grain grower, residing at Pullman, Whitman county, Washington. In 1890 he produced about 18,000 bushels of wheat. Among shipments made by him was one carload of 38,493 pounds, shipped January 19, 1891, at the regularly published rate of 32½ cents per hundred pounds from Pullman, Washington, to Portland, Oregon, a distance of 379 miles, over the lines owned by the Oregon Railway & Navigation Company, operated by the Oregon Short Line & Utah Northern Railway Company, and is part of the "Union Pacific System."

2. Whitman county is the center of a productive wheat region in southeastern Washington, where wheat production has largely increased in the last few years. The crop of 1890 for that county is estimated at 8,000,000 to 10,000,000 bushels. About 1,000,000 bushels were shipped from Pullman station. Storage on the farms is insufficient, and wheat is largely delivered for immediate shipment or stored in elevators or warehouses at the various railway stations soon after harvest. In the four months from September 15 to January 15 most of the crop is shipped to market, though shipments continue to a later period and to some extent throughout the year. As a rule, farmers do not ship to market, but sell to dealers at the railway stations. The wheat is sold, delivered, and shipped in sacks ready for export. In the spring of 1891, after the crop of 1890 had been mostly sold and shipped, the price was as high as 75 cents. In the years 1887, 1888, 1889, and 1890, it was at times as low and lower than 45 cents, but the average was nearly 50 cents per bushel for the three or four years. The sacks cost 4 cents per bushel. The shipper loads and unloads at a cost of about \$1 per ton. The Pullman rate of 32½ cents is a group rate, and prevails over the southeastern Washington wheat-growing territory north of Snake river, from all stations as far west as Cornell or Palouse Junction.

These rates have not much changed in the last three or four years.

3. The lines of the Northern Pacific Railroad Company, or Northern Pacific System, extend to Pullman, Washington, and Pendleton, Oregon, and other points in the wheat producing districts of southeastern Washington and northeastern Oregon. The two systems make and maintain a joint tariff of rates to Portland from Pullman and other points in such group rate territory, and the same rates to Portland are made and maintained in separate tariffs by each of the two systems from the several stations on their respective lines in such territory.

The Northern Pacific system makes the same rate on wheat from southeastern Washington and northeastern Oregon over its lines to Tacoma and Seattle as are established by such joint or separate tariffs from the same points to Portland. The distance over the Northern Pacific route or lines from Pullman to Portland is 620 miles, to Tacoma 478 miles, and its wheat rate is  $32\frac{1}{2}$  cents to both. The distance over its route or lines from Pendleton to Portland, Oregon, is 453 miles; to Tacoma, Washington, 308 miles; to Seattle, 329 miles, and its rate,  $23\frac{1}{2}$  cents per hundred pounds, is the same to the three places.

4. Flour is occasionally carried by the Union Pacific System and connecting lines from Oregon to Galveston, Texas, a distance of 2,500 miles, at 75 cents per hundred pounds. Wheat is carried by the Northern Pacific in considerable quantities from points east of the Columbia river in the state of Washington to St. Paul, Minnesota, a distance of 1,600 miles, for 50 cents per hundred pounds. In the main, wheat produced in Oregon and Washington is shipped to Portland, Tacoma, and Seattle. Previous to 1888 the Northern Pacific did not reach Pullman over its own or leased lines, and wheat from that place and adjacent country was shipped to Portland. This traffic is now divided, and in 1890 nearly one-half of it went over the Northern Pacific to Tacoma, from which the ocean rate was for a time 65 cents per ton lower than from Portland.

5. Pullman is a branch line station 19 miles from defendant's



line extending from Spokane to Portland, distant from each other about 450 miles. To Portland the rate is the same from Pullman and Spokane. The rate in dispute is over the line or lines of the Union Pacific System from Pullman, by way of Colfax, La Crosse, Walla Walla, and Wallula in Washington, and Umatilla, Oregon, to Portland. On the 135 miles of this route between Pullman and Walla Walla the grades are heavy in both directions, one grade of 150 feet to the mile extending five miles, and another as heavy for a distance of two and a half miles. The remainder of the route, in the main, is down the Columbia river, and the grades are light. In winter the operation of the road is subject to interruption from snow-drifts.

6. This road or line is operated by the Oregon Short Line & Utah Northern Railway Company under a lease from the Oregon Railway & Navigation Company, which became effective August 1st, 1887, for a term of 99 years, and embraces, besides lines of railway, several water lines, ocean and river, including vessels having an aggregate tonnage of 18,000 tons. Under it the Oregon Short Line & Utah Northern Railway Company is in the possession and use and operates all the lines of road owned by the said Oregon Railway & Navigation Company, an aggregate mileage of 1,029 miles, situate chiefly in the states of Oregon and Washington. The annual rental for the leased property to be paid by the Oregon Short Line & Utah Northern Railway Company to the Oregon Railway & Navigation Company aggregates \$2,556,593.64, and is the amount of its fixed charges, including the interest on \$27,940,000 of bonded indebtedness and a dividend of 6 per cent on its \$24,000,000 of capital stock. The annual payment of this rental is guaranteed by the Union Pacific Railway Company.

7. Besides the lines or road of the Oregon Railway & Navigation Company operated by the Oregon Short Line & Utah Northern Railway Company, it operates several lines aggregating a mileage of 1,400 miles which it owns in the territory of Utah and the states of Wyoming, Montana, Idaho, and Oregon. It owns a majority of the capital stock of the Oregon Railway & Navigation Company, and the Union Pacific Railway Company owns a controlling part or interest of the capital stock of

the Oregon Short Line & Utah Northern Railway Company.

8. The annual reports of the directors of the Union Pacific Railway Company contain detailed statements of reported operations of the roads or lines operated by the Oregon Short Line & Utah Northern, including the road of the Oregon Railway & Navigation Company and other leased roads, lines, and property, all of which are stated in said annual reports to be part of the Union Pacific system.

9. For 1886, the year previous to making said lease, the Oregon Railway & Navigation Company reported net earnings of \$3,229 per mile on its mileage, then 686 miles; the gross earnings being \$6,052, and the operating expenses \$2,822, per mile. For the year 1890, with a largely increased mileage, the Union Pacific Railway Company reports decreased gross earnings with increased operating expenses, or \$894,336.79 net earnings on 1,029 miles of road in 1890 as compared with \$2,215,686.90 annual net earnings on 686 miles of road reported by said Oregon Railway & Navigation Company for 1886, the year next before its line became part of the Union Pacific system under said lease.

10. The Union Pacific Railway Company also reports the net earnings of the leased railroad and property of the Oregon Railway & Navigation Company as insufficient for the payment of the agreed rental guaranteed by the Union Pacific. The reported shortage is for 1888, \$349,118.11; for 1889, \$736,205.82, and for 1890, \$1,789,190. For these years the reported net revenue was, for 1888, \$2,228,443.87; for 1889, \$1,542,294.43, and for 1890, \$894,336.79.

11. In explanation of the falling off in net revenue and earning capacity of the Oregon Railway & Navigation Company, the report of the Union Pacific Railway Company for the year 1889, filed as an Exhibit in this proceeding on behalf of the defendants, says:

"This loss in the earning capacity of the Oregon Railway & Navigation Co. was due mainly to deficient crops in eastern Oregon & Washington, caused by the absence of snow during the previous winter, which resulted in a large falling off in earnings from local traffic. The traffic exchanged between the Oregon Railway & Navigation Co. and the lines of the Union

Pacific system, the earnings from which appear chiefly in the gross returns of the latter, underwent a large increase during the year."

The appendix to said Union Pacific report contains "part of the report of the Committee of the United States Senate accompanying the Senate bill for the settlement of the Pacific Railroad debts."

In this report of the Senate Committee it says:

"In view of the recent development of the Pacific northwest this alliance of the Oregon Short Line and the Oregon Railway & Navigation Co. has become of the greatest possible value to the Union Pacific, constituting probably, to-day, one-third of the total through business of the Union Pacific Railway."

No evidence was offered in explanation of the falling off in the net earnings for 1890, amounting to nearly one-half as compared with the previous year.

The Union Pacific system reports for years ending December 30, 1888, 1889, and 1890, show:

Year.	Mileage.	Gross Earnings.	Operating Expenses.	Net Earnings.	Net Earnings Per Road Mile.
1888	5041.36	\$30,195,522.53	\$18,476,428.04	\$10,460,634.74	\$2074.96
1889	7389.55	39,669,600.06	24,516,751.40	13,656,047.41	1848.02
1890	7662.94	43,049,248.36	29,343,961.81	12,238,064.09	1618.16

The gross earnings per mile of road as reported were, for 1888, \$5,969.56; 1889, \$5,366.34; and for 1890, \$5,602.13.

After the hearing and previous to the filing of briefs by counsel for defendants, the rate complained of was, on August 10, 1891, reduced to 28½ cents. On June 7, 1893, a further reduction was made to 23½ cents, the rate now in force, and the reasonableness of which is now to be determined.

Counsel for defendants insist that 28½ cents—the rate at the time their brief was filed—was not excessive. It is, they claim, less in proportion to distance than the rate, 23½ cents, found to be reasonable by the Commission in *Evans v. Oregon R. & Nav. Co.*, 1 Inters. Com. Rep. 641, for carrying wheat from Walla Walla, Washington, 246 miles to Portland, Oregon, in the spring of 1887.

The order of the Commission in that case was:

"That on and after the 15th day of December, 1887, the defendant must cease to charge more than twenty-three and one-half cents per hundred pounds, or four dollars and seventy cents per ton, on wheat transported by it over its railroad lines from Walla Walla, in Washington territory, to Portland, in the state of Oregon, during the present grain season.

"The order is also made in this form as to the present grain season upon the statement in the answer of the defendant that further reductions on wheat rates are intended to be made by defendant as soon as this can be done, and upon the general course of dealing of defendant, as shown in the proofs, that the rate for the next season on wheat will doubtless be further modified."

This order provided alone for the wheat season of 1887-1888, which had nearly closed when the order was made; and their counsel overlooked the fact that defendants have not met the reasonable expectation of the Commission that for the then next and subsequent wheat seasons or years the Walla Walla and Portland rate would be further modified.

Previous to the summer of 1887, grain and other freights destined to Portland from points further east, including Pullman, passed over the lines of the Oregon Railway & Navigation Company. In 1887 and 1888 the Northern Pacific Railroad Company extended its lines west to Tacoma, thence to Portland, and east to Pullman and other points in the grain growing region of southeastern Washington, and over its lines so extended the Northern Pacific Company took from Pullman and other points a considerable part of the wheat and other freights which would otherwise have been carried over the road of the Oregon Railway & Navigation Company. The defendants urge this diversion of Pullman and other traffic from their lines in justification of higher transportation charges than would be reasonable if there was no competition for Pullman business.

Competition, or a division of business as the result of building a second road where previously but one existed, should justify lower rather than higher charges.

The falling off in the annual surplus and earnings of the Oregon Railway & Navigation Company, as reported by the Union Pacific Railway Company, is urged as an additional reason for maintaining higher charges from Pullman than might be reasonable with the former rate of reported annual earnings.

The road of the Oregon Railway & Navigation Company is part of the Union Pacific system, and in view of the reported increase in gross earnings of the whole system and the well maintained annual earnings per mile of road, the "large increase" in the interchange of business between this road and the other roads of that system, and the great "value" of the Oregon Railway & Navigation Company to the Union Pacific Railway Company, it may be fairly assumed that the apportionment of earnings as made by the Union Pacific is largely a question of bookkeeping.

In support of the allegation that the charges complained of were "unjust, unreasonable, and extortionate," complainant's counsel in their brief direct attention to the order of the Commission in the Food Products case, investigated in 1890 (3 Inters. Com. Rep. 93) and to the rate of charges in force over the Northern Pacific lines from Pendleton, Oregon, to Seattle, Washington. The Food Products case involved charges on freight carried from Kansas and Nebraska points to Chicago. The conditions upon which these charges are based are so unlike the conditions affecting transportation in Oregon and Washington that the reasonableness of the grain rate from Kansas or Nebraska to Chicago affords no safe criterion for charges between Pullman, Washington, and Portland, Oregon. Transportation rates in force on lines of rival companies or on different branches or lines of the same company have a bearing upon and are entitled to consideration in connection with the question of reasonable charges for transportation services rendered under like conditions.

From Pendleton to Seattle the distance over the Northern Pacific is 329 miles and the rate was  $23\frac{1}{2}$  (now 23) cents. The rate from Pullman to Portland, now reduced to  $23\frac{1}{2}$ , was  $32\frac{1}{2}$  cents when the former rate was referred to as evidence of the unreasonableness of the latter. The latter, or Pullman-Port-

land rate, is now relatively as low as the Pendleton-Seattle rate. The grades are heavy on both lines and the other conditions of transportation are practically the same over these two routes, except that the Pullman-Portland haul is 50 miles longer and the rate 15 cents per ton higher. This rate is but  $3\frac{1}{2}$  cents on the hundred pounds, or 75 cents per ton, in excess of the rate of charges which the complainant asked to have established. Substantial reductions have been made since the case was heard which justify the expectation that further reasonable modifications will follow, and further reductions of the Pullman-Portland rate by order of the Commission are not now deemed justifiable.

On the basis of the reductions made in the rate complained of, it was  $8\frac{1}{2}$  cents on the hundred pounds in excess of the reasonable rate which the defendants might lawfully charge complainant on the carload of wheat shipped January 19, 1891. The amount of this overcharge we find to be \$40.51, which amount the Oregon Short Line & Utah Northern Railroad Company should pay to the complainant, and it is so ordered.

A. S. NEWLAND, T. S. HAUSCHILD, WALTER REEDER,  
COMPLAINANTS, V. THE NORTHERN PACIFIC  
RAILROAD COMPANY, THE UNION PACIFIC  
RAILWAY COMPANY, THE OREGON SHORT LINE  
& UTAH NORTHERN RAILWAY COMPANY, THE  
OREGON RAILWAY & NAVIGATION COMPANY.

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Complaint filed March 18, 1891.—Answers filed April 6 to May 18, 1891.—  
Heard at Spokane Falls, Washington, May 29 and 30, 1891.—Decided  
January 31, 1894.

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1. It is the right of shippers to have their goods carried, and the duty of common carriers to receive and forward freights by the least expensive routes at reasonable through rates.
2. Where there were two routes from the place of shipment to the place of destination, one much longer and much more expensive to operate than the other, the longer and more expensive being operated by one, while the more direct and less expensive route was over continuous lines operated by more than one common carrier: *Held*, That the rate must be reasonable for the transportation by the shorter and less expensive route.
3. Where the roads and branches of two companies extend to and penetrate a wheat producing district, from which they make a joint rate for distances of 480 miles and each company makes the same rate separately from the same district, one for distances of 450 and the other for distances of 650 miles over their respective lines to the same destination, *Held*, That it may be fairly assumed that the rates so jointly and separately made are reasonably remunerative and profitable. *Held further*, That what is reasonable compensation for this longer and more expensive branch line service is excessive for the shorter distance of 311 miles over a less expensive route from the same district to the same destination.
4. The same rate over a district so extensive denies to the producer nearer the market the advantages of his location, for which he receives no compensation in the fact that such rate was established to enable a railroad company to sell its lands more distant from markets at better prices.
5. The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial.

6. That railroad investments may be as secure as other property, the reasonable rates should be liberal until earnings are sufficiently large for a fair return on actual expenditure.
7. Where the market price yields but a scant return for the labor and expense of production, the cost of transportation needs to be as moderate as may be consistent with justice to the carrier.
8. Where a road or system of roads leased and made the road of another company a part of the system, *Held*, That the agreed rental cannot be accepted as the amount which the leased property must earn and the lessee may retain before any reduction can be made in the rates over the leased lines.
9. Where two companies or railroad systems stipulated for a division of traffic and agreed that when one party carried traffic belonging to the other, but one-half of the charges should be retained for the transportation service, *Held*, That in the light of this arrangement in connection with the other facts of the case some reduction was warranted.

*Messrs. Jones & Voorhees*, for complainants.

*Mr. J. H. Mitchell*, for Northern Pacific Railway Company.

*Mr. John M. Thurston*, for Union Pacific Railway Company, and the Oregon Short Line & Utah Northern Railway Company.

*Mr. W. W. Cotton*, for Oregon Railway & Navigation Company.

#### REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner* :

The complainants for themselves and other farmers of Adams county, in the state of Washington, filed their complaint against the Northern Pacific Railroad Company and the Union Pacific Railway Company, alleging that the rate charged by said Northern Pacific and Union Pacific Companies, 32½ cents on the hundred pounds, for the transportation of wheat in carloads from Ritzville, Washington, to Portland, Oregon, was and is "excessive, unjust, and unreasonable." That the distance over the lines of the two companies from Ritzville to Portland through their junction point, Wallula, Washington, is 311 miles, or 97 miles over the Northern Pacific from Ritzville to Wallula and 214 miles over the Union Pacific from Wallula to Portland. That they, the petitioners, at Ritzville on January 10, 1891, offered a carload of wheat ready loaded in a car of the Northern Pacific Railroad



Company for shipment *via* Wallula Junction to Portland, which the Northern Pacific Company would only ship and did ship over its own lines, *via* Pasco Junction, thence across the Cascade Mountains *via* Tacoma, Washington, to Portland, a distance of 478 miles over a circuitous route having many heavy grades and curves. That there are but few ascending grades on the route from Ritzville to Portland *via* Wallula Junction, where the lines of the Northern Pacific and Union Pacific Companies connect at grade, and where traffic is exchanged between these companies.

The complainants further aver that 16½ cents is a reasonable rate on the hundred pounds of wheat in carloads from Ritzville through Wallula Junction to Portland, and "claim that they have a just and reasonable right to have the products of their farms carried to market by the shortest and least expensive routes at a reasonable through rate, and that the refusal of either, or both, of the aforesaid defendants to carry the said products is arbitrary, unjust, unreasonable, injurious to the public weal and a serious obstruction to interstate commerce."

The complainants pray for investigation and an order requiring the Northern Pacific Railroad Company "to cease and desist from refusing to receive and transport grain from the said Ritzville, Washington, by their own and connecting roads by way of the said Wallula Junction and that both the said defendants be commanded further to perform such service at such a through aggregate rate as after due hearing and investigation shall be deemed just and reasonable, and for such other and further order as the Commission may deem necessary in the premises."

Answering separately, the Northern Pacific Railroad Company, one of the defendants, admits that it is engaged in the operation of a railroad between points in the state of Washington and points in the state of Oregon, and denies that the rate charged by it for carrying grain from Ritzville, Washington, to Portland, Oregon, namely, 32½ cents per hundred pounds, is excessive, unjust, or unreasonable.

It admits that the distance from Ritzville, Washington, to Portland, Oregon, is 478 miles over its own line; that it passes over the Cascade Mountains; has many heavy grades and

curves, and avers that its line is expensive to maintain and operate.

It admits that its track connects at grade with the Union Pacific Railway at Wallula Junction in the state of Washington, 97 miles distant from Ritzville. It further alleges that its road terminates at Wallula Junction; that it has no line of railroad or route to Portland, Oregon, from Ritzville, Washington, over its own or a leased line by way of Wallula Junction, and that the only route it has from Ritzville to Portland over its own line and leased lines is by way of Pasco Junction and Tacoma, Washington, and submits that it has been improperly proceeded against.

The Union Pacific Railway Company separately answering, states that it is a corporation engaged in operating a line of railroad, but denies that it operates such railroad between the points stated in the complaint or any of them, or that it operates a line of railroad in either of the states of Washington or Oregon. On the coming in of this answer the Oregon Short Line & Utah Northern Railway Company and the Oregon Railway & Navigation Company were made parties to this proceeding and served with a copy of the complaint, together with a notice to satisfy or answer the same.

The Oregon Railway & Navigation Company thus made a defendant, answering the complaint, says that prior to August 1, 1887, it owned and operated a line of railway between Wallula Junction, Washington, and Portland, Oregon; that by agreement or lease dated January 1, 1887, which became effective August 1, 1887, all the road owned and operated by this defendant in the states of Washington and Oregon at the date of said agreement had been leased to the Oregon Short Line & Utah Northern Railway Company for a fixed rental in no way dependent upon the earnings of the leased property, and that said Oregon Short Line & Utah Northern Railway Company had, at the time said agreement became effective, entered into, was at the time of the commencement of this proceeding, and still is, in the use and possession of all the railway lines owned by this defendant. That this defendant is not, and has not since August 1, 1887, been engaged in operating or in making rates for transportation or interested

in the profits or earnings of any railway in the states of Oregon or Washington.

The Oregon Short Line & Utah Northern Railway Company, answering the complaint in this proceeding, says that it operates under a lease from the owner of said property a line of railroad extending from Wallula Junction, in the state of Washington, to Portland, in the state of Oregon, and that its line of railroad connects at said Wallula Junction with the line of railroad operated by the Northern Pacific Railroad Company, one of the defendants, and, further answering, alleges that an arrangement is in existence between it and the said Northern Pacific Railroad Company providing for the exchange of traffic between the said Northern Pacific Railroad Company and this defendant at Wallula Junction aforesaid, under and by virtue of which arrangement the agent of said Northern Pacific Railroad Company at Ritzville "was authorized to forward freights destined to Portland, Oregon, over the line of this defendant *via* Wallula Junction, and to issue through billing for the same."

This defendant admits that the distance between Ritzville and Portland *via* Wallula and the line of this defendant is about 311 miles, and that the rate on wheat between said points is 32½ cents, and denies that this rate is excessive or unjust or more than fair and reasonable compensation for the service performed, and further avers that if the rate prayed in plaintiff's petition, 16½ cents per hundred pounds, were put in effect it would work a hardship on this defendant and practically compel it to go out of business so far as through traffic originating off the line of its own road is concerned.

The matters thus presented and complained of were investigated and the parties heard at Spokane, in the state of Washington, where the facts upon which the conclusions of the Commission in this proceeding are based were ascertained to be:

1. Ritzville is a station on the main line of the Northern Pacific Railroad Company in Adams county, one of the wheat producing counties of southeastern Washington, and, excepting 1889, a year of crop failure, considerable quantities of grain have been since 1887 and continue to be annually shipped from Ritz-

ville and the adjacent country to Portland, Oregon, or other tide-water Pacific Coast points.

2. Wheat production has considerably increased in the past few years both in Washington and Oregon. Storage on the farms is insufficient and wheat is largely delivered for immediate shipment or stored in elevators or warehouses at the various railway stations soon after harvest. In the four months from September 15 to January 15, most of the crop is shipped to market, though shipments continue to a later period and to some extent throughout the year. As a rule, farmers do not ship wheat to market, but sell to dealers at the railway stations, where it is sold, delivered, and shipped in sacks ready for export. In the spring of 1891, after the wheat had been mostly sold and shipped, it was as high as 75 cents. In the three or four years, 1887-8-9 and '90, it was at times as low and lower than 45 cents, but the average was nearly 50 cents per bushel for the three or four years. The sacks cost 4 cents per bushel. The shipper loads and unloads at a cost of nearly one dollar per ton.

3. From Ritzville to Portland there are two routes by rail. The rate, 32½ cents per hundred pounds, is the same over both. The shortest, most direct, and least expensive to operate of the two is over the line of the Northern Pacific Railroad Company, *via* Pasco Junction to Wallula Junction, a distance of 97 miles, thence 214 miles to Portland over the lines of the Oregon Railway & Navigation Company, operated by the Oregon Short Line & Utah Northern Railway Company. The two last named companies and the lines owned or operated by them are part of the "Union Pacific System." On this route there are but few ascending grades, and these are comparatively light.

The other route is wholly over the lines operated by the Northern Pacific Railroad Company. This route is from Ritzville to Pasco Junction; thence across the Cascade Mountains through a long tunnel to Tacoma, and thence to Portland, a distance of 480 miles, and by 169 miles the longer route. Transportation on both routes is subject to interruption from snow-drifts in winter.

4. The complainants are farmers and producers of grain,

residing in the neighborhood of Ritzville. On the 10th of January, 1891, they, or one of them, loaded a car furnished by and belonging to the Northern Pacific Company with wheat, and requested the agent of the company at Ritzville to bill and forward the same through to Portland over its own line to Wallula, thence over the line of the Union Pacific System, the shorter route. There was some controversy as to billing and forwarding the car of wheat and whether or not it would go by the shorter route as complainant had requested. On being advised by the agent that by whatever route the grain was forwarded the charges would be  $32\frac{1}{2}$  cents, the complainant consented to the routing by the agent over lines of the Northern Pacific Railroad Company.

5. The road, or that part of the shorter and more direct route, between Wallula and Portland belonging to the Union Pacific System, is operated by the Oregon Short Line & Utah Northern Railway Company under a lease from the Oregon Railway & Navigation Company. This lease became effective August 1, 1887, is for a term of 99 years, and embraces besides lines of railway, several water lines, ocean and river, including vessels having an aggregate tonnage of 18,000 tons. Under this lease the Oregon Short Line & Utah Northern Railway Company is in the possession and use and operates all the lines of road owned by the said Oregon Railway & Navigation Company, an aggregate mileage of 1,029 miles, situated chiefly in the states of Oregon and Washington. The annual rental for the leased property to be paid by the Oregon Short Line & Utah Northern Railway Company to the Oregon Railway & Navigation Company aggregates \$2,556,593.64, and is the amount of its fixed charges, including the interest on \$27,940,000 of bonded indebtedness and a dividend of 6 per cent on its \$24,000,000 of capital stock. The annual payment of this rental is guaranteed by the Union Pacific Railway Company.

6. Besides the lines of road of the Oregon Railway & Navigation Company operated by the Oregon Short Line & Utah Northern Railway Company, it operates several lines, aggregating a mileage of 1,400 miles, which it owns in the territory of Utah and the states of Wyoming, Montana, Idaho,

and Oregon. It owns a majority of the capital stock of the Oregon Railway & Navigation Company, and the Union Pacific Railway Company owns the controlling part of the capital stock of the Oregon Short Line & Utah Northern Railway Company.

7. The annual reports of the directors of the Union Pacific Railway Company contain detailed statements of reported operations of the roads and lines operated by the Oregon Short Line & Utah Northern, including the road of the Oregon Railway & Navigation Company and other leased roads, lines, and property, all of which are stated in the said annual reports to be part of the Union Pacific System.

For 1886, the year previous to making said lease, the Oregon Railway & Navigation Company reported net earnings of \$3,229 per mile on its mileage, then 686 miles, the gross earnings being \$6,052 and the operating expenses \$2,822 per mile. For the year 1890, with a largely increased mileage, the Union Pacific Railway Company reports decreased gross earnings with increased operating expenses, or \$964,853.95 net earnings on 1,029 miles of road in 1890 as compared with \$2,215,686.90 annual net earnings on 686 miles of road reported by said Oregon Railway & Navigation Company in 1886.

The Union Pacific Company also reports the net earnings of the leased railroad and property of the Oregon Railway & Navigation Company as insufficient for the payment of the agreed rental guaranteed by the Union Pacific Company. The reported shortage is for 1888, \$349,118.11; for 1889, \$736,205.82; for 1890, \$1,789,190.

8. The Ritzville-Portland rate of 32½ cents is a group rate, and prevails over the southeastern Washington wheat growing territory north of Snake river, including the "Palouse country," and also a small district in Idaho.

The group station nearest to Portland is Connell on the main line of the Northern Pacific Company 266 miles from Portland by the more direct or Wallula route and 435 miles over the Northern Pacific route through Tacoma. The group station farthest from Portland is Julietta in Idaho on the Spokane and Palouse branch of the Northern Pacific 481 miles from Portland over the Wallula route and 650 miles over the Northern Pacific lines through Tacoma

Besides the "Spokane and Palouse branch," extending from Marshall Junction on its main line 115 miles southeast to Julietta, the Northern Pacific has a branch line, the "Central Washington branch," extending from Cheney on its main line 108 miles northwest to its terminus Coulee City in the group territory and from which terminus the Portland rate is the same as from Connell, Ritzville, and Julietta. One rate was first established over this widely extended district by the Northern Pacific Company in 1888 that it might sell its granted lands in every part of the district on equally advantageous terms.

Bolles is 271 miles and the nearest to, while Spokane is 450 miles and the farthest, of the group stations, from Portland reached by lines of the Union Pacific System. On parts of this line or route which is by way of Colfax and near to the Idaho border there are many heavy grades making it comparatively expensive to maintain and operate. The lines of both the Northern Pacific and of the Union Pacific systems extend to various points in the wheat producing district of southeastern Washington northwestern Idaho and northeastern Oregon. The two systems make and maintain a joint tariff of rates from such group rate territory, and the same rates to Portland are made and maintained in separate tariffs by each of the two systems from the several stations on their lines in such territory. The Northern Pacific System makes the same rate on wheat from northwestern Idaho, southeastern Washington, and northeastern Oregon over its lines to Tacoma and Seattle which are established by such joint or separate tariffs from the same points to Portland.

9. Flour is occasionally carried by the Union Pacific System and connecting lines from Oregon to Galveston, Texas, a distance of 2,500 miles, at 75 cents per hundred pounds. Wheat is carried by the Northern Pacific in considerable quantities from points east of the Columbia river in the state of Washington to St. Paul, Minnesota, a distance of 1,600 miles, for 50 cents per hundred pounds. In the main, wheat and flour produced in Oregon and Washington are shipped to Portland, Tacoma, and Seattle.

10. In explanation of the falling off in net revenue and earning capacity of the Oregon Railway & Navigation Company, the report of the Union Pacific Railway Company for the year 1889, filed as an exhibit in this proceeding on behalf of the defendants, says:

"This loss in the earning capacity of the Oregon Railway & Navigation Company was due mainly to deficient crops in eastern Oregon and Washington, caused by the absence of snow during the previous winter, which resulted in a large falling off in earnings from local traffic. The traffic exchanged between the Oregon Railway & Navigation Company and the lines of the Union Pacific system, the earnings from which appear chiefly in the gross returns of the latter, underwent a large increase during the year."

The appendix to said Union Pacific report contains "part of the report of the Committee of the United States Senate accompanying the Senate bill for the settlement of the Pacific Railroad debts."

In this report of the Senate Committee it says:

"In view of the recent development of the Pacific northwest this alliance of the Oregon Short Line and the Oregon Railway & Navigation Company has become of the greatest possible value to the Union Pacific, constituting probably to-day one-third of the total through business of the Union Pacific Railway."

No evidence was offered in explanation of the reported falling off in the net earnings for 1890, amounting to nearly one-half as compared with the previous year.

The Union Pacific System reports for years ending December 30, 1888, 1889, and 1890 show:

Year.	Mileage.	Gross Earnings.	Operating Expenses.	Net Earnings.	Net Earnings per Road Mile.
1888	5,041.36	\$30,195,522.53	\$18,476,428.04	\$10,490,694.74	\$2,074.96
1889	7,389.55	39,609,600.06	24,516,751.40	18,656,047.41	1,848.02
1890	7,562.94	43,049,248.36	29,343,961.81	12,238,094.09	1,618.16

The gross earnings per mile of road as reported were, for 1888 \$5,989.56; 1889, \$5,368.34; and for 1890, \$5,692.13.



## MILEAGE, EARNINGS, OPERATING EXPENSES, AND NET EARNINGS OF OREGON RAILWAY &amp; NAVIGATION COMPANY, EXCLUSIVE OF WATER LINES.

Year.	Mileage Operated.	Gross Earnings.		Operating Expenses and Taxes.		Net Earnings.	
		Amount.	Per Mile.	Amount.	Per Mile.	Amount.	Per Mile.
1888....	<sup>1</sup> 751.90	<sup>2</sup> \$4,880,000	<sup>3</sup> \$6,490	<sup>2</sup> \$2,631,000	<sup>3</sup> \$3,499	<sup>2</sup> \$2,249,000	<sup>3</sup> \$2,991
<sup>1</sup> 1889.....	984.90	4,576,136	4,646	3,024,488	3,071	1,551,648	1,575
<sup>1</sup> 1890.....	1,023.60	4,954,711	4,817	4,060,376	3,947	894,335	869
Avg.			5,311		3,518		1,698

<sup>1</sup> From report filed with the Commission for Year ending June 30, 1888.

<sup>2</sup> Estimated from Report of Directors of Union Pacific Railway, for 1888, operation of water lines deducted.

<sup>3</sup> From Report of Directors of Union Pacific Railway, Year ending December 31, 1890.

12. The Northern Pacific R. R. reports for years ending June 30, 1888, 1889, and 1890, show :

Year.	Mileage.	Gross Earnings.	Operating Expenses.	Net Earnings.	Net Earnings Per Road Mile.
1888	3,319	\$15,846,327.88	\$ 9,025,596.14	\$6,820,731.74	\$2,118.70
1889	3,439	19,707,487.95	11,863,541.47	7,843,926.48	2,290.87
1890	3,585	22,610,502.78	13,069,136.88	9,521,365.90	2,655.89

The Northern Pacific, in its report for the year ending June 30, 1889, says of wheat production and shipments in Washington :

"Large crops were harvested in the Palouse and Walla Walla districts, and the business was handled very satisfactorily *via* Cascade division, as follows: 3,775 carloads to Puget Sound; 675 carloads to local intermediate milling points; and 312 carloads to Portland. In addition to the above about 900 carloads of Washington wheat were transported to eastern terminals.

"The rapidity with which Washington is developing, agriculturally, may be realized from the statement that during the last fiscal year nearly half as much wheat was shipped from that territory as from all points on our lines east of the Missouri river."

13. A traffic contract made before the Act to regulate commerce was passed between the Northern Pacific Railroad

and the Oregon Railway & Navigation Company, the "Union Pacific System," in force and on file with the Commission, provides for an interchange of traffic at Wallula Junction; for a division or method of division and adjustment of rates of charges on traffic interchanged; and for compensation for excess of car mileage. One provision of said contract is that traffic "shall be interchanged at Wallula, from the line of the one party to the line of the other, and so far as shall be reasonably practicable and the convenience of the parties will permit, without change of cars; but in no case shall the cars of either party, without its expressed agreement or consent, be run beyond or off the road or roads of the other party. And in cases where it shall be expedient to make a change of cars, the expenses of making the transfer and change of cars shall be borne by the party receiving, from the line of the other, the traffic so interchanged."

14. Said contract designates divisions of territory and the business thereof which shall belong to the contracting companies, respectively, and for the transportation of which there is to be no competition. As to traffic from points reached by the lines of both companies said contract provides:

"Wallula being a point common to the main or trunk line of each party, the business originating at, or destined to, Wallula, to or from points or places west of Wallula reached by the lines of both parties, shall be deemed competitive traffic; and the business of the said branch of the Pacific Company into and beyond the "Palouse Country," and that of the said branch of the Oregon Company *via* Colfax at, and east of, their junction, to or from Wallula or points west of Wallula, shall also be deemed competitive traffic. All other traffic whatsoever shall be deemed non-competitive traffic.

*Section Second.* That all competitive traffic shall be pooled, and the rates shall be settled for and divided between the parties by a tonnage division. The rates of all competitive traffic shall be fixed and determined, from time to time, by the said parties, or their respective successors or assigns. In cases where a tonnage division shall not be reasonably practicable, the party carrying any of the competitive traffic belonging to the other party shall retain one half of the

charges for the transportation thereof over its line, and shall pay the other one-half of said charges to the other party."

Joint tariffs or rate sheets made and filed with the Commission by the Northern Pacific Company and the Union Pacific System show that on August 10, 1891, after the hearing and investigation at Spokane, the defendants reduced their charges from said group rate territory, including the Ritzville rate complained of, to 28½ cents, and on July 27, 1893, they further reduced these charges from 28½ to 23½ cents, which is the rate now in force and the reasonableness of which remains to be determined. Separate tariffs taking effect June 7, 1893, made and filed with the Commission, show the same reductions made by the defendants, respectively, which were made by their joint rate sheet which took effect July 27, 1893.

In its separate answer to the complaint the Northern Pacific Company averred its line ended at Wallula Junction, and that it operated no line or lines through Wallula to Portland; that its route or the only line or lines operated by it between Ritzville and Portland was through Pasco Junction to Tacoma, thence to Portland, and this route, it correctly avers, passes over the Cascade Mountains, and is very expensive to maintain and operate.

Through these averments the Northern Pacific sought to excuse itself from any obligation to carry, or to participate in carrying, freights from Ritzville over the direct route through Wallula to Portland in connection with the other defendants. At the time this excuse was offered the Northern Pacific had established in connection with its codefendants a joint tariff of rates and charges from Ritzville and other points on its line to Portland *via* Wallula over this more direct through route, and, as recited in the answer on behalf of the Union Pacific System, a traffic contract or arrangement then in existence provided for the interchange of traffic at Wallula Junction, and authorized the Northern Pacific to forward and bill through over that route. The joint tariffs made since the hearing of this case are in accordance with this arrangement.

The complainants "claim that they have a just and reasonable right to have the products of their farms carried to market by the shortest and least expensive routes at a reasonable through rate."

In this we believe no more is demanded by complainants than is their right under the law, and the rate from Ritzville to Portland which the carrier or carriers may lawfully exact must be reasonable for the transportation by the shorter and less expensive route through Wallula Junction.

This route of 311 miles is down to and along the Columbia river with few up grades and these are light. The facilities for the interchange and transfer of freight at Wallula Junction are adequate and convenient. Neither the maintenance nor the operation of the route is arduous or expensive in comparison with other roads or lines of equal length in the same locality or section of the country.

The route of the Union Pacific System from Spokane to Portland 450 miles is over its branch line to and through Wallula, on parts of which there are many costly grades. Transportation over it is necessarily subject to the expense of interchanges and the cost of separate operation incident to branch line service while the charges are no more than from Ritzville.

The facts show that grain and grain products are being carried from Ritzville to Portland at the reduced Ritzville-Portland joint rate by the Northern Pacific Company over its own line by way of the long and expensive route across the Cascade Mountains to and through Tacoma.

This company is also shown to be a carrier of grain and its products over its Ritzville, Cascade Mountain, and Tacoma main line route to Portland from all points on its Central Washington and its Marshall Junction and Palouse branches. The distance to Portland over this Northern Pacific route from some of the branch line stations on either branch is more than twice as great as the distance from Ritzville over the direct line through Wallula. Transportation over branch lines requires separate equipment and transfer.

It may be fairly assumed that the rates separately made over their respective routes or lines by the Union Pacific System and the Northern Pacific Company, as well as the rates made by them jointly from these distant branch line points are reasonably remunerative and profitable; and in view of all the ascertained

facts we must believe that reasonable compensation for the transportation of like products over these longer lines embracing the much more costly branch line service is excessive and unreasonable for the less expensive service over the more direct and very much shorter Wallula Junction route from Ritzville to Portland.

It was found on the testimony of its general manager that the Northern Pacific had established the same rate from the grouped stations more than 200 miles apart, including all the stations on two branch lines, as a matter of policy to enable that company to sell its lands more distant from markets, at better prices. Between the company and the purchaser of lands so inconveniently located this might be an equitable arrangement with any assurance that it would be continued after the company had disposed of its lands. But such an arrangement affords to grain growers hundreds of miles nearer to market no compensation for the advantages of their location.

The general manager also testified his belief when the Union Pacific System constructed its branch line into and through the Palouse country to Spokane it became a competitor for business along this line and made the continuance of one rate by the Northern Pacific necessary throughout the group territory. This belief takes no notice of the maintenance of the same rate on the Northern Pacific Central Washington Branch which extends 100 miles and more northwest of points reached by any line of the Union Pacific System.

The defendants make joint tariffs, agree upon rates from all parts of the group territory reached by the lines of the rival companies, and by contract apportion the traffic or part of business to be taken by them respectively.

The practice of making one rate on the same product over a very large district, and thus equalizing the burdens of transportation to the same market, is only justifiable under special and exceptional circumstances. This practice is not to be encouraged when, as in the case under consideration, the difference in the transportation expense from the various parts of such district is considerable and substantial.

In defense of the rate complained of the defendants put in evidence the reported falling off in the surplus earnings of the

road and branches of the Oregon Railway & Navigation Company since they were leased and made a part of the Union Pacific System and the insufficiency of the earnings so reduced to pay the promised rent of the leased property.

That the apportionment of earnings as made and reported by the Union Pacific Company is too largely a question of book-keeping to be made the basis of reasonable rates is fairly inferred from the annual increase in the earnings of the Union Pacific System, the "large increase" in the interchange of business between the road of the Oregon Railway & Navigation Company and the other roads of the "Union Pacific System, the earnings from which appear chiefly in the gross earnings of the latter," and the great "value" of the Oregon Railway & Navigation Company to the Union Pacific Railway Company, as reported by the latter.

That railroad investment may be as secure as other property, the reasonable rate should be liberal until earnings are sufficiently large for a fair return on actual expenditure. The average annual surplus earnings credited by the Union Pacific Company to the Oregon Railway & Navigation Company for the three years next before the commencement of this proceeding was approximately \$1,700 per mile of road, which would be a moderate investment return on a road costing not more than \$42,500 per mile. Whether the surplus earnings of the leased lines would have been greater operated independently of the Union Pacific System than they are reported to have been as a part of it, is matter of conjecture. Whatever the fact as to this might be, the amount which the Union Pacific System undertook to pay for the use of the leased road as a feeder to increase the business of the other roads of the system can hardly be accepted as the amount which the leased property must earn and the lessee retain before any reduction of this grain rate will be lawful.

To justify the reduction petitioned for by the complainants, they offered to prove the relatively high cost of producing wheat in comparison with its market value, and a producer of successive large crops testified that the cost to the grower of wheat, ready for market, at the railway stations was about sixty cents a bushel. This estimate is too high and

extravagant. The average price realized at the railway depots for the three or four years next before the investigation of this complaint was forty-five cents a bushel. With a return so scant for the labor and expense of production the cost of transportation needs to be as moderate as may be consistent with justice to the carrier.

One stipulation of the contract between the Northern Pacific Company and the Union Pacific System provided for a division of business between them and requires the company or system which carries traffic assigned to the other to pay one-half the freight charges to the party to which the traffic belonged and to retain the other one-half for the transportation service rendered. This stipulation shows that the parties to it, the defendants, considered one-half of the rate to be from time to time agreed upon as sufficient compensation for the transportation or movement of freights while the other half, nearly 12 cents of the rate in question, would be surplus or balance remaining after paying operating expenses or expense of transportation. In the light of this arrangement in connection with the other facts, some reduction is warranted in the Portland rate from the less distant and more accessible points of the group district.

The petitioners ask for a reduction in the Ritzville-Portland rate to  $16\frac{1}{2}$  cents, practically to one cent per ton per mile, which is thought to be lower than is now justifiable in view of the terminal and transfer charges, though these are light. In consideration of all the facts, it is believed that the reasonable rate on the hundred pounds of wheat in carloads from Ritzville, Washington, to Portland, Oregon, should not be more than twenty cents. A reduction will be ordered accordingly.

ALANSON S. PAGE, CADWELL B. BENSON, AND  
CHARLES TREMAIN, COMPLAINANTS, V. THE  
DELAWARE, LACKAWANNA & WESTERN RAIL-  
ROAD COMPANY, THE NEW YORK CENTRAL  
& HUDSON RIVER RAILROAD COMPANY, THE  
MICHIGAN CENTRAL RAILROAD COMPANY, DE-  
FENDANTS.

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Complaint filed March 8, 1893.—Answers filed March 24 to April 11, 1893.—  
Depositions filed May 24, 1893.—Heard May 25, 1893.—Briefs filed June  
7 to September 8, 1893.—Decided March 28, 1894.

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1. Where it appears that a complainant has invoked the aid of the law for the purpose of securing what he, with the acquiescence of the carrier, had previously obtained in apparent contravention of the law, such acquiescing carrier will not be held entitled to plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainant be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. If, independently of any action or interest of complainants, the conduct of defendants with reference to the transportation which is the subject of the proceeding is shown by the evidence to be unlawful, it is the duty of the Commission to execute and enforce the statutory provisions applicable thereto.
- 2 Upon consideration of the great reduction which has taken place in the value of window shades, the arbitrary increase of shade classification by the carriers during the progress of this proceeding, and all the other facts and circumstances herein which pertain to the rights of shade shippers and consignees generally, and of purchasers of that article of household necessity,—

*Held*, That the classification of window shades as first class in the Official Classification has become unjust, and that the legal duty of defendants to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry, requires them to reduce their classification of window shades to the class which, under the Official Classification, is now applied to "window hol-lands and shade cloth, plain, uncut, and undecorated."



*John D. Kernan*, for complainants.

*Frank Loomis*, for New York Central & Hudson River Railroad Company.

*Henry Russel* and *Ashley Pond*, for Michigan Central Railroad Company.

*C. E. Gill*, for Delaware, Lackawanna, & Western Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

*VEAZEY, Commissioner:*

In the complaint it is averred that the complainants are co-partners doing business at Minetto, New York, under the co-partnership name of the Minetto Shade Cloth Company, and are engaged in the manufacture, sale, and shipment of the articles hereinafter mentioned; that the defendants have been and are railroad corporations engaged as common carriers in the transportation of property, by the lines of the defendant, the Lackawanna Company, between Minetto and New York City, and together between Minetto and Chicago and other western points, under some common control, management, or arrangement for continuous carriage between the points aforesaid, so that each of the defendants constitutes a part or portion of the same through and continuous line of transportation, and are respectively within the provisions of the Act to regulate commerce; that the articles in respect of which the complaint is made consist of window shades; that since April 4, 1887, the defendants, in violation of said act, have been and are guilty of unjust discrimination in that they have been and are in the habit of classifying the articles, manufactured and delivered to them for transportation by the complainants, in a classification which is unjust, unreasonable, and relatively higher than the classification of other similar kinds of property and merchandise in the elements of value, risk, compactness, and cost of service; that as a result of such unjust and relatively higher classification they have been and are in the habit of charging other persons rates much lower for like and

contemporaneous service, under substantially similar circumstances and conditions, by reason of the unjustly discriminating lower classification made by the defendants of the goods and merchandise so transported for such other persons; and the complainants specify the wrongs thus in general terms charged, and further allege that, by reason thereof, defendants have made and given, and do make and give, undue and unreasonable preferences and advantages to some persons, firms, companies, and corporations in transportation over their respective lines, and have subjected and do subject complainants thereby to undue and unreasonable prejudice and disadvantage; that the classification complained of is that which places window shades N. O. S. boxed, any quantity, in the first class; and window shades plain, undecorated, mounted on rollers, boxed, any quantity, in the second class; and that to be free from unjust discrimination all window shades should be in the third class for less than carloads and in the fourth class for carloads; and the complainants make appropriate prayer for relief.

The defendants respectively answer the complaint, but finally put their defense in their brief and argument upon two grounds: (1) That the complainants, by intentional and persistent misdescription of their shipments, and by violation of the law in so doing, preclude themselves from applying to the Commission and asking the exercise of its jurisdiction upon the merits of the controversy. (2) That the classification complained of is not unjust and in violation of the statute.

#### FACTS.

1. The complainants are copartners, doing business at Minetto, New York, under the firm name and style of "The Minetto Shade Cloth Company," and are engaged in the manufacture and sale of shade cloth and of window shades, decorated and undecorated, and the shipment thereof to New York City, and to Chicago and other western points. Their establishment is located about one-half a mile from the railroad track at Minetto, a point about four miles southeast of Oswego, N. Y. The cars for the shipment of complainants' goods are

brought up from Syracuse in the local freight train, switched to the siding and left there to be loaded. The complainants haul their goods to the cars. Their teamsters give the shipping slips to a tallyman employed by the Lackawanna road who tallies the goods and aids the teamsters in loading the cars. These slips or receipts are made out in duplicate by the complainants, and after the freight has been checked into the cars, they are signed by the agent of the defendant, the Lackawanna Company. The original is returned to the complainants and from the duplicate, kept by the railroad company, the way bill is made. The initial road does not weigh the property described in the receipts, nor does it make any examination to see if the package contains what is set forth in the receipts; but it is the duty of its agents to understand the classification of freight shipped and to bill the goods so shipped accordingly. Trains made up in Oswego pick up these cars and haul them to Syracuse or New York city.

The establishment of the complainants covers two or three acres. During the spring and summer months they employ about two hundred and fifty persons, which number is increased in the busier seasons of fall and winter to about four hundred.

The complainants have been in business since 1879. Prior to 1886, they manufactured window shading, and shade cloth used for window shades, and sold it entirely by the yard or by the piece. Their goods were known as the Minetto window shading and were shipped by the complainants as window hollands. In 1886, the complainants commenced decorating the cloth by machinery, cutting it up into shades, placing them on the market, and shipping them in pairs. Prior to that time the decoration had all been done by hand. The complainants began making and selling mounted shades, ready for hanging, in the fall of 1887. This was then a new article commercially. They continued to ship the incomplete shades for about a year after this; then the trade began calling for the completed article, and their shipments of shades in packages or cases grew rapidly, so that the total volume of their consignments now amounts to something like four hundred carloads a year. It does not appear, however, that a majority of

the complainants' shipments are in carload lots. Some indication of the proportion of carload to less than carload quantities shipped by them is given in tables hereinafter set forth ; also the different sizes of packages and cases which they use.

Prior to 1886, when shade manufacture was conducted entirely by hand, and the stamping or decoration was done by wood-block printing, the value of the cheapest grade was about seventy-five cents a pair, while the higher grades ranged from five to seven dollars a pair. The commercial value of machine decorated shades, mounted and ready to put up, is from twenty-five cents to seventy-five cents a pair. The old hand-decorated shade was not mounted. The complainants admit that lowering the classifications, as here asked for, would not be likely to increase the number or the tonnage of their shipments. They do not prepay freight charges nor do they make allowances therefor in settling with their customers.

2. Up to January 24, 1893, the complainants described all their shipments of shades simply as "window hollands," except when they shipped shades in pairs; in that case the shipment was, in continuation of the old practice, billed by them as window shades; and the complainants still bill window shades under that name when they ship them in pairs, but the number of such shipments is very small.

The carriers have established inspection bureaus located at junctions or transfer stations within the territory covered by the "Official Classification." The revising clerk at a transfer station gives the way bill to an inspector, who thereupon examines the contents of a car to see whether they differ in description, either in character or weight, from that mentioned in the way bill. When there is no difference he marks the way bill "O. K." But if there is a difference, the inspector notes the fact on the way bill and hands it over to the revising clerk who makes the necessary corrections in the way bill. The expense bill of the delivering carrier shows the increase of weight or correction of classification, and the consignee pays the additional charges. When necessary, the inspector opens the packages in order to make an examination of their contents, and also re-weighs some or all the packages if he has reason to believe that the weight has been under-billed. It

appears from a statement put in evidence and covering the period from September 1, 1892, to February 28, 1893, that about ninety per cent of the complainants' shipments were described by them as "window hollands," a little over nine per cent as "mounted window hollands," and less than one per cent as "window shades." Another exhibit in testimony shows that very many shipments by complainants were described as window hollands, when in fact they consisted of window shades. If the complainants' shipments billed as window hollands and given third-class rating had been billed as window shades, they would have taken first-class rates.

On January 24, 1893, the agent of the Lackawanna Company, under instruction from the Assistant General Freight Agent of that company, requested the complainants to discontinue the practice of billing window shades as window hollands. The complainants assured him that the request would be complied with. After that time their shipments of shades were described as "plain mounted" or as "decorated" hollands, a pencil being used to write it on a printed shipping slip over or through the words "window hollands," the words "plain mounted" or "decorated." But a considerable number of shipping slips, or tickets, were put in evidence showing that this pencil notation had been omitted by complainant's employees, after the date above mentioned; and the weights of some of these shipments were under-billed. The complainants claim that these misdescriptions were the result of oversight. For two days, in the month of May, 1893, the 12th and 13th, the complainants' shipping clerk did, as instructed by complainant Benson, describe all shade shipments as "shades." This was after the taking of depositions had been commenced in New York City. This instruction was then countermanded by the complainants, and the description of the shades as hollands was resumed. The complainants did not conceal their method of billing shades as window hollands.

3. The complainants appear to have relied for justification of their course upon the following grounds: The old practice of shipping under the title of shades only when the shades were sent in pairs; the statements made to them in 1887 by

the agent of the receiving road, and in 1888 by a representative of the "Merchants' Despatch," a fast freight line operated over the New York Central System, that the billing of shades as window hollands would not be improper; and the fact that under the provisions of the classification goods specified simply as "window hollands," without any specification as to their being plain, uncut, and undecorated, would take first-class rates, if the receiving road insisted upon billing exactly in accordance with the terms of the classification, and, therefore, even if the meaning of the classification contended for by the defendants should be correct, that there was no misdescription upon which the roads could base a charge of fraudulent billing. The defendant's principal witness (Mr. Gill) also testified that a shipment billed simply as window hollands should, under the classification, take first-class rates.

When the Lackawanna agent stated to complainants in 1887, that the billing of window shades as hollands would not be incorrect, he also said that if any change should become necessary the complainants would be advised. In 1890, the agent of that road notified the complainants verbally that some inspectors of the railroads in the west said that they (the complainants) were not complying with the classification, but the complainants declare that they did not understand this to be "advice" that a change in their methods was necessary. Complainants' practice of shipping shades as hollands has also been the subject of conversations held at different times prior to 1893 between one or more of the complainants and representatives of the carriers in New York. It appears from the testimony of complainants' shipping clerk (Snaveley) that an order for window shades would not be understood to call for window hollands, nor would an order for the latter commodity be taken to require the shipment of any window shades. Window shades, window hollands, and shade cloth are not synonymous terms. The first is well known as an article used in house furnishing; the other terms are applied to material used in the manufacture of shades. There is no ambiguity in the classification of these articles. As will appear by the statement of the classification hereinafter contained, a shipper desiring to ascertain rates in force on window hollands or

shade cloth would have no difficulty in determining from the classification in force that window hollands and shade cloth, if plain, uncut, and undecorated, take third-class rates, and that if otherwise, they are subject to first-class charges. So with window shades; if plain and unmounted they would, under Classification No. 11, be in the second class; otherwise in the first class. Complainants have described their shipments of window shades as window hollands for the evident purpose of thereby obtaining lower rates than could lawfully have been charged if the proper description had been given; and, except when corrections were made by the carriers' inspection bureaus, this purpose was accomplished by the acceptance of such shipments as window hollands by the receiving road and the improper billing thereof by the local agent at third-class instead of first-class rates. It is indicated by the evidence that representatives of the carriers had knowledge of complainants' practice of billing shades as hollands, and the practice finally resulted in the remonstrance on the part of the carriers on January 24, 1893. There is no showing that the carriers have taken steps to prosecute the complainants or any person in their employ for false billing or false report of weights under section 10 of the Act to regulate commerce.

4. The defendants are common carriers engaged in the transportation by continuous carriage and shipment of passengers and property between Minetto and New York City, and Minetto and Chicago and other western points. The road of the Lackawanna Company connects Minetto with New York City, passing through the states of New York, Pennsylvania and New Jersey; the Lackawanna takes on the freight at Minetto, and carries New York City freight direct to that point. Freight destined west of Buffalo is carried by it to Syracuse, N. Y., thirty-one miles southeast of Minetto, where it is delivered to the New York Central Company, which takes it to East Buffalo, N. Y., and from there it is transported by the Michigan Central to Chicago and other points. The "Official Classification" is in use on the defendant lines, and these carriers have established and published schedules of rates for the transportation of property described in said classification.

5. The classification made by the "Official Classification" Committee, of which the defendant carriers are members, on window shades and plain uncut shade cloth, prior to 1891, was as follows: window shades, first-class; shade-cloth, third-class. In 1891, the complainants asked the "Official Classification" Committee for the classification which they petition for in this case, to wit: window shades, L. C. L., third-class; C. L., fourth-class. The request was refused. But the committee did then adopt the classification of those articles, which continued in effect until January 1, 1894, *viz.*: window shades, boxed, N. O. S., first-class, L. C. L. and C. L.; window shades, plain, undecorated, mounted on rollers, boxed, second-class, L. C. L. and C. L.; window hollands and shade cloth, plain, uncut, and undecorated, third-class, L. C. L. and C. L. Official Classification No. 11, which was in effect at the time this proceeding was instituted, classified the goods involved in this case as follows:

	L. C. L.	C. L.
Dry goods, N. O. S., in bales, O. R. C. or in boxes.....	1	
Dry goods as follows: Any of the following named articles (and remnants thereof) made wholly of cotton, when specific name of articles and name of shipper are plainly marked on outside of packages and stated in shipping receipts and bill of lading (marking or describing packages as containing "Cotton Piece Goods" will not be sufficient), <i>viz.</i> : Awning Stripes, Calicos (64 square and under, only); Canton or Cotton Flannels, plain or dyed (not figured); Canvas; Cheese Cloth; Corset Jeans; Cottonades; Cotton Warp; Cotton Yarn; Crash (Cotton); Domestic Checks; Stripes (Hickory Shirting Stripes) and Cheviots (plain or napped on one side); Cotton Duck; Denims; Drills; Domestic Gingham; Glazed Cambrics; Osnaburgs; Sheetings, bleached and brown; Tickings; <i>Window Hollands and Shade Cloth, plain, uncut, and undecorated</i> ; in bales O. R. C., or in boxes.....	8	
All Dry Goods, except the articles above specifically named, will be classed as "Dry Goods, N. O. S." unless the above conditions are complied with. Any package containing articles of more than one class will be charged at the tariff rate for the highest classed article contained therein.		
<i>Window Shades, N. O. S. boxed</i> .....	1	
<i>Window Shades, plain, undecorated, mounted on rollers, boxed</i> .....	2	



By Official Classification No. 12, effective January 1st, 1894, the second-class rating for plain mounted shades was abolished and all window shades were again placed in the first-class.

The following table shows the classification changes that have taken place in window shades, shade cloth, and window hollands since April 1st, 1887:

*Changes in Official Classifications.*

COMMODITY :	Number of Classification.	DATE OF CHANGE.	Class.	
Window shades	1	April 1, '87.	1	Discontinued under this description in Classification No. 8.
Window shades N. O. S., boxed	8	Feb. 2, '91.	1	Discontinued under this description in No. 12.
Window shades plain, undecorated, mounted on rollers, boxed	8	Feb. 2, '91.	2	Discontinued under this description in No. 12.
Window shades boxed	12	Jan. 1, '94.	1	
Shade cloth boxed	1	April 1, '87.	1	Discontinued under this description in No. 4.
Shade cloth N. O. S., boxed	4	Aug. 15, '88.	1	Discontinued under this description in No. 5.
Shade cloth, uncut and undecorated	5	Feb. 18, '89.	3	Still the same under No. 12.
Window hollands and shade cloth, plain, uncut and undecorated	8	Feb. 2, '91.	3	Still the same under No. 12.

The following class rates are in effect :

Between Minnetto and Chicago,—

Class	1	2	3	4	5	6	
Rates	60	52	40	28	24	20	(Oswego rate.)

Between Minnetto and New York City,—

Class	1	2	3	4	5	6	
Rates	35	30	25	18	15	13	(Oswego rate.)

Between New York City and Chicago,—

Class	1	2	3	4	5	6	
Rates	75	65	50	35	30	25	

(These rates between New York and Chicago were also in effect April 1, 1887.)

6. The classification and the comparative bulk, weight, and value of a number of articles known as dry goods are shown in the following table:

Article.	Size of Case or Bale.	Weight	Con- tents.	Value, Case or Bale.	Cubic Feet in Case.	Weight per Cubic Foot.	Value per Cubic Foot.	Classi- fication.
<i>Cotton.</i>	<i>Inches.</i>	<i>Pounds</i>	<i>Yards.</i>	<i>Dollars.</i>		<i>Pounds</i>	<i>Dollars</i>	<i>Class.</i>
Flannels .....	33x32x48	400	1000	80.00	29.33	13.63	2.72	3
Cheviots .....	40x30x34	800	1800	135.00	23.61	33.88	5.72	3
Checks .....	40x40x40	450	1000	80.00	37.03	12.15	2.16	3
Denims .....	33x34x27	425	1000	100.00	17.53	24.24	5.07	3
Tickings .....	33x34x27	404	1000	100.00	17.53	23.38	5.70	3
Corset Jeans .....	25x25x23	300	1500	90.00	8.33	36.01	10.80	3
Cottonade .....	40x48x30	900	1000	150.00	33.33	27.00	4.50	3
Prints .....	30x30x36	450	2500	150.00	18.75	24.00	6.25	3
Calicos .....	30x30x36	450	2500	150.00	18.75	24.00	6.25	3
Canvas .....	33x34x27	425	1000	100.00	17.75	23.94	5.63	3
Cambric .....	24x30x46	500	3000	142.50	17.50	28.57	8.10	3
Duck .....	33x34x27	500	1000	100.00	17.75	28.16	6.63	5
Gingham .....	30x30x27	400	2000	140.00	14.40	27.70	6.94	3
Drills .....	24x29x18	210	600	42.00	7.72	27.21	5.54	3
Drills .....	22x36x36	500	2400	290.00	16.55	30.21	17.52	3
Bleached Sheet g .....	40x40x14	500	1676	167.60	12.90	38.76	12.90	3
Lace Curtains .....	36x26x48	500	150	600.00	26.00	19.23	23.05	1
Lace Curtains .....	29x19½x29½	110	60	260.00	9.72	11.31	24.77	1
Curtain Fringe .....	22x33x4	265	2802	233.50	20.16	13.14	11.57	1
Linen .....	40x28x27	666	2697	950.00	17.75	37.50	53.52	1
Linen .....	40x28x27	561	2168	1548.00	17.75	31.60	87.21	1

7. A very frequent shipment by the complainants is a box containing one dozen complete window shades, and usually weighing from twenty to twenty-one pounds. The Minetto shades, which are the best quality, will weigh twenty-three or twenty-four pounds, and if they are seven-foot shades, the box containing one dozen will weigh twenty-five pounds. The complainants also ship shades in what they call a "standard case," containing twenty-three dozen and averaging, in weight, four hundred and ninety-five pounds, and in value \$54.74. A table in evidence and below set forth shows the value of the different grades of complainants' shades, their weight, bulk, and value when packed in "standard cases," and the relative cost of labor to manufacture:

*Table Showing Weights, Contents, Value, Cubic Measurements, etc., of the Twenty three Dozen Case of Shades.*

	Size of Case.	Weight	Con- tents.	Value.	Cubic feet in case.	Weight per cubic foot.	Value per cubic foot.	Per cent of labor.
Minetto shades .....	20½x26½x42½	538 lb.	23 doz.	\$59.00	12.70	42.36 lb.	\$4.65	.0886
Seneca " .....	" " "	542 "	23 "	63.25	12.70	41.90 "	5.06	.0888
Ontario " .....	" " "	485 "	23 "	55.20	12.70	38.79 "	4.37	.0873
Holland " .....	" " "	463 "	23 "	51.75	12.70	36.45 "	4.07	.0866
Felt " .....	" " "	459 "	23 "	34.50	12.70	34.56 "	2.71	.0866
Average		495		\$54.74		38.65	\$4.26	.0886

8. The classification of the different raw materials, used in the manufacture of shades, in carloads and in less than carloads, is stated in a table put in evidence, as follows:

Cloth.....	3d Class C. L.	3d Class L. C. L.
Steel.....	6th	
Paper.....	6th	
Lead.....	5th	
Colors.....	5th	4th
Iron Castings.....	6th	4th
Starch.....	6th	4th
Clay.....	6th	4th
Flour.....	6th	4th
Lumber.....	6th	
Dyes Aniline.....	4th	2d
Dyes Wood.....	5th	3d
Glue.....	5th	4th
Nails and Tacks.....	5th	4th
Shade Rollers.....	5th	3d
Shade Slats.....	5th	3d

Comparison with classifications 11 and 12 show some variation from the foregoing table as to two or three articles. The table is, however, correct in the main.

9. There are thirty-five different colors of the Minetto shading; 8 colors in Senecas and Ontarios; perhaps 12 colors in the shades called Hollands; and about 6 colors in Felt. The Felt shade is paper. These colors are spread over the entire shade, and are put on before the cloth is cut up. The decoration is something else. About forty per cent of the complainants' shade cloth is decorated. This decoration consists of a design printed, or stamped, upon the shade and finished in bronze, and is done by machinery. Only a few shades, less than one per cent, of the complainants' manufacture, are decorated subsequent to the cutting of the shades, the decoration prior to the cutting being the single print. The complainants have ceased altogether from decorating shades by hand, but some other manufacturers still continue hand decorations. There are four grades of decoration, called respectively, one print, two print, three print, and four print shades. It costs the complainants twenty cents a dozen for one print, and twenty-five cents a dozen for each additional print. The four prints cost ninety-five cents a dozen. Twenty cents a dozen for decorating would cover all the shades made, except about one per cent. The Senecas are printed. The Ontarios are finished when they are filled. The completed shade consists of the shade cloth cut in the proper length, usually six feet in

length by thirty-eight inches in width, one end of which is attached to a roller by tacks and the other end is hemmed up and a slat run in. There may be also a fringe attached to the bottom of the shade. The roller also has brackets fastened to the ends. The market price of this finished shade is from \$1.50 to about \$3.00 per dozen. About seventy per cent of the wood used by the complainants in the manufacture of their shades comes by water from Michigan, Wisconsin, and Canada.

The largest number of shades are sold from the lower grades, as is shown by the following statement in evidence:

*Per Cent of Shades Made by the Minetto Shade Company from September 1st to March 1st, 1893.*

Minetto.....	18.7%
Seneca.....	16.4%
Ontario.....	34.6%
Holland.....	15.2%
Felt.....	14.8%
	<hr/>
	99.7%

And the following shows the average weight of Cloth and of Rollers:

		<i>Cloth.</i>	<i>Rollers.</i>
Minetto.....	1,200 yards	635	520
Seneca.....	1,200 "	623	520
Ontario.....	1,200 "	514	520
Holland.....	1,200 "	478	520
Felts.....	1,200 "	416	520
		<hr/>	<hr/>
Average .....		533	520

Window hollands, or shade cloth, the principal constituent of the window shade, is made from a loosely woven cotton fabric obtained from New England mills. That used by the complainants is sent in bales to a bleachery at Norwalk, Conn., where the bleaching is done. Complainants' first grade of shading is also filled with clay and flour at Norwalk, but the lower grades are, except bleaching, treated at Minetto.

10. The standard commercial package of window hollands, or shade cloth, as manufactured and sold by the complainants, is a case of 1,200 yards and weighing, with the box containing it, from 416 to 635 pounds, the box measuring 25x25x42 inches. The value of the contents ranges according to quality from \$48.00 to \$144.00. This case holds twenty pieces of hollands, containing sixty yards in each piece. This shade cloth, or hollands, constitutes about ten per cent of the total shipments of the complainants.

Taking the Minetto shade for illustration, a case of hollands measuring  $25 \times 25 \times 42$ , weighing 635 pounds, and having a market value of \$144.00, will with the other materials added, when made into complete shades, more than fill two cases with Minetto shades, each case containing 23 dozen shades, measuring  $20\frac{1}{4} \times 25\frac{1}{4} \times 42\frac{1}{4}$  inches, weighing 538 pounds, and having a market value of \$69.00; and the two cases together weigh 1,076 pounds, and are worth \$138. On the basis of 50 dozen shades from each case of hollands the shades made from a case of hollands worth \$144.00 would, at complainants' stated price of \$3.00 per dozen, be worth \$150. Under this calculation only \$6.00, or 12 cents per dozen, remains to cover the value of rollers, slats, attachments, and some labor. While this margin may possibly be sufficient, the inference is rather plain that placing the value of the case of hollands at \$144.00 is probably an overstatement, and that it is likely to be somewhere between that figure and \$132.00; the value stated in the testimony for the defense.

It is clear, however, that of two cases, one containing hollands or shade cloth and the other finished shades, both being of similar bulk and weight, the case containing the shades has less market value; and that complainants' standard case of  $20\frac{1}{4} \times 25\frac{1}{4} \times 42\frac{1}{4}$  inches, filled with Minetto shades, is worth only about half as much as a case of window hollands or shade cloth measuring  $25 \times 25 \times 42$  inches. The average weight of a case of complainants' shades is 495 pounds and the average weight of the shade cloth case is about 533 pounds, a difference of only 38 pounds.

11. Complainants employ at least three sizes of cases in which to ship shades:

The one dozen case, measuring  $6 \times 7 \times 44$  inches and weighing 20 to 25 pounds.

The ten dozen case measuring  $12 \times 15 \times 42$  inches and weighing about 200 pounds.

The twenty-three dozen case measuring  $20\frac{1}{4} \times 25\frac{1}{4} \times 42$  inches and weighing an average of 495 pounds.

The following table, put in evidence by the defense, shows the weight and sizes and the number of these shipments for six months:

*Statement Compiled from the Duplicate Shipping Receipts of the Minnetto Shade Cloth Co., for the Period September 1st, 1898, to February 28th, 1899, inclusive.*

Month.	Total weight of all shipments described as "window shades" or "window shades"	Total Number and Weight of Cases weighing 25 lbs. each or less.		Average Weight.	Per Cent of Total Weight.	Total Number and Weight of Cases weighing from 25 to 200 lbs. each.		Average Weight.	Per Cent of Total Weight.	Total Number and Weight of Cases weighing more than 200 lbs. each.		Average Weight.	Per Cent of Total Weight.
		Number	Weight.			Number	Weight.			Number	Weight.		
1892	Pounds.		Pounds.	Pounds.			Pounds.	Pounds.			Pounds.	Pounds.	
Sept.	273,960	3,057	62,975	20.60	22.98	552	89,160	161.52	32.54	272	121,825	447.88	44.48
Oct.	187,670	1,939	39,250	20.24	20.91	248	36,065	145.42	19.31	246	112,355	456.72	59.88
Nov.	266,135	1,746	35,800	20.31	13.26	225	28,010	124.49	10.52	439	202,825	464.01	76.22
Dec.	514,515	8,390	166,150	19.80	32.29	710	110,615	155.79	21.50	519	237,750	458.09	46.21
Jan.	902,805	23,506	463,700	19.72	51.36	1,279	163,580	127.85	18.11	573	275,575	480.93	30.53
Feb.	534,625	11,692	242,025	20.70	45.27	845	112,675	133.34	21.08	388	179,925	463.72	33.65
Tot.	2,679,710	50,880	1,009,400	20.05	37.67	3,859	540,055	139.94	20.15	2,437	1,130,355	463.78	42.18

Using the month of November, 1892, for illustration, the number of cases shipped by complainants weighing 25 pounds or less was 1,746; the number weighing from 25 pounds to 200 pounds was 225; and the number of those weighing more than 200 pounds was 439. In the other months the proportion of 25-pound shipments was much greater.

12. The roads have more weight to carry when shades are shipped in one dozen packages than they would have in transporting the same number of shades packed in a 23-dozen case. It is estimated that 23 of the one dozen packages will exceed the 23-dozen case in weight by from 70 to 80 pounds. But when the smaller cases are shipped to different consignees there must be as many different sets of bills and as many deliveries; while with the large cases there is less handling, but one billing and one delivery. As hereinbefore mentioned, the complainants practically do their own loading. The "Official Classification" contains a rule (subdivision B of rule 16) which reads as follows: "No single package or small lot of freight of one class, classified 1st-class or lower, will be taken at less than 100 lbs. at the class to which it belongs."

13. No carload rating is allowed in the "Official Classification" for articles of dry goods. Between Nov. 1, 1892, and Feb. 25, 1893, the number of carloads of 20,000 lbs. or more, shipped by complainants, was nineteen. The total weight of these shipments amounted to 502,400 pounds. For the same period complainants' total shipments were 2,218,080 pounds. It is claimed for the defense that a carload classification for window shades would result in driving small manufacturers from the business and centralize the trade in the hands of the larger manufacturers. Beyond this, and the fact that a firm in Meriden, Conn., had applied for a reduction of the classification, including a carload rate, and been refused, there is no evidence sufficient to constitute the basis of a finding upon this point.

14. Complainants' principal competitors in the manufacture and sale of shades are located in New York; Oswego, N. Y.; Chicago, Ill.; St. Paul and Minneapolis; Meriden, Conn.; Providence, R. I.; Jersey City, N. J. There are also Hand Manufactories in Chicago, St. Louis, Cincinnati, and Cleveland.

A reduction of the less than carload classification on shades would confer equal benefit upon complainants' competitors in the east in reaching the Chicago market, and such reduction will also give cheaper rates to New York and other eastern points to shade manufacturers at Chicago and other points in the West.

Upon the point as to whether a reduction of the classification of shades to that of hollands and shade cloth would injure the business of the western manufacturer, the evidence shows that he is not obliged to purchase any raw materials in the east, except hollands or shade cloth, which he can also obtain from points in the south. The complainants, located at an interior point in the state of New York, must bring all the raw material used in their manufactory by boat to Oswego, or rail to Minetto. The Chicago manufacturer has the same and apparently even greater advantages in the matter of transportation of raw materials, except hollands or shade cloth, both in respect of distance from points of supply and of rates of freight. The Chicago manufactory is, moreover, located at the complainants' principal point of distribution, and also competes for the sale of shades at various points west of Buffalo.

15. Manufactured goods are, as a rule, classified higher than the raw materials out of which they are made, because generally the process of manufacture converts the raw materials into less weight, and increases the bulk and value. But the condition of the manufacturing industry and the competition of different producing markets are also matters which have considerable weight with the Classification Committee. The classification principle of a higher class for the finished article than for the raw material of which it is composed has, however, certain exceptions. For instance, woolen cloth is in the first class and is still in the first class when converted into woolen clothing, although the process of manufacture greatly enhances the value and possibly increases the bulk. Again, some of the ingredients used in the manufacture of soap are worth considerably more than the soap itself; but soap is in the fourth class, L. C. L., and the sixth class, C. L., while some of the ingredients used in the production of soap take higher rating.



## CONCLUSIONS.

*The Preliminary Question.*

We have first to determine what effect the complainants' admitted practice of shipping shades as hollands shall have upon our action in this case. The classification as regards these two articles was and is in no wise ambiguous, and we find that complainants did persist in designating their shade shipments as hollands with a view of securing third instead of first class rates thereon. We are not moved from this conclusion by the fact that complainants did not prepay shipments nor allow for freight charges in settling with their customers. That freight charges enter largely into all or nearly all commercial transactions involving the transportation of property, is too well known to require discussion. That they do enter into complainants' calculations is demonstrated by their having brought this case and having at various times requested the classification committee to change the rating on window shades. Moreover, if we are to regard them as having no interest in the amount of freight charged upon their shipments, then we must look upon their attitude in insisting upon describing shades as hollands for transportation purposes, while they regard shades and hollands as different articles in dealing with their customers, as absurd. Such a view is therefore altogether untenable. Complainants admit that the reductions asked for in the complaint will not be likely to increase the number of their shipments or add to their shipping tonnage. We think this is explained, in part at least, by the fact that under their practice of shipping shades as hollands their business has become adjusted to a third class rating on shades, and that, so far as complainants are concerned, the granting of a third class rating as prayed for here will merely enable them to maintain that adjustment. Complainants' motive in endeavoring to secure a third class rating for shades as far back as 1890 and since must have been with a view of changing their practice of describing shades as hollands without submitting to higher rates. We think they were keenly alive to the impropriety of shipping shades under the name of hollands; otherwise their efforts would have been

directed towards securing such a reduction in the classification as would place all hollands, decorated or undecorated, cut or uncut, in the third class.

We are also forced by the facts in this case to find that complainants' practice in misdescribing their shade shipments as window hollands would have availed them nothing if the agent of the receiving road had correctly applied first class charges to shipments described simply as "window hollands." Billing and carrying such shipments at third class rates was not warranted by the classification, which did and does limit third class rating for window hollands and shade cloth to such as are plain, uncut, and undecorated. This method of billing and forwarding complainants' shades as window hollands under third class rates was practically acquiesced in by the defendants during a period of years. Moreover, complainants did not attempt to conceal their practice of thus describing goods offered for carriage to the defendants. It was known to a local agent of the receiving road; it was known to a representative of the "Merchants' Despatch," a freight line operating over the New York Central system; it was known to freight inspectors in the service of the Carrier's Inspection Bureau as far back as 1890; it was the subject of conversation at different times during recent years between a member of the complaining firm and officers connected with the committee charged by the carriers with duties pertaining to classification; it was presumably a matter of some notoriety, and the subject of more or less frequent consideration by the carriers' representatives. We find, further, that the receiving carrier, if not the others, was chargeable with knowledge of this practice of its agent in erroneously billing this freight, described simply as "window hollands," at third class rates.

The amendment of March 2, 1889, subjecting shippers, as well as individuals in railroad service, to fine and imprisonment for the offense of false billing, false classification, false weighing, or false report of weight, or any other device or means by which unjust discrimination may be secured, was designed to protect carriers as well as innocent shippers. The absence of that provision against shippers was made the basis of vehement protests by carriers in every section of the

country, and its passage was hailed as a just recognition by Congress of the right of carriers to be protected from the fraudulent acts of their customers. But notwithstanding the presence of this provision in the statute, carriers and their representatives have almost invariably withheld from the prosecuting officers of the Government the evidence of violations by shippers which they alone could furnish. They have seemed to prefer that the people should regard them as accomplices in the illegal transactions rather than as the victims of law-breaking shippers, and even when called upon to testify before a grand jury, many railway officials have deliberately assumed the role before the public of participants in the offense, by refusing to give evidence concerning alleged violations of the law on the ground that their testimony might tend to criminate themselves. These considerations, pertinent in a general sense, may or may not be applicable to the attitude of the defendants with reference to the continued misdescription and improper rating of complainants' freight. Upon this point we go no farther than to say that the carriers have shown great lack of vigilance. Apart from being able to invoke the whole power of the law and the aid of the prosecuting officers of the Government, the exercise of ordinary care on their part in the reception and billing of complainants' freight would have rendered it impossible for complainants to derive any advantage from the misdescription in which they indulged.

It is not within our province to adjudicate whether any person has or has not so demeaned himself as to violate the penal provisions of the Act to regulate commerce; that is matter for determination by a court of competent jurisdiction in a proceeding where the accused may avail himself of his constitutional right of trial by jury, and nothing said herein should be construed as assuming to decide any such question. But this Commission has authority to determine what effect the admitted or proven acts of parties shall have upon the standing of such parties in cases before it. We took this view in the case of Ottinger, a ticket broker (*Ottinger v. Southern Pac. R. Co.* 1 Inters. Com. Rep. 607, 1 I. C. C. Rep. 144); and in the case of Slater, a disappointed applicant for an

annual pass (*Slater v. Northern Pac. R. Co.* 2 Inters. Com. Rep. 243, 2 I. C. C. Rep. 359). The Commission refused to entertain the complaint of the ticket broker, and declined to assist complainant Slater in retaliating upon the carrier for revoking his annual pass; but the Commission did, nevertheless, for the guidance of the carrier and in the interest of the general traveling public, consider and rule upon the question presented by the facts in that case. We think this indicates the rule which should be followed in this case: Where it appears that a complainant has invoked the aid of the law for the purpose of securing what he, with the acquiescence of the carrier, had previously obtained in apparent contravention of the law, such acquiescing carrier will not be held entitled to plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainant be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. If, independently of any action or interest of complainants, the conduct of defendants with reference to the transportation which is the subject of the proceeding is shown by the evidence to be unlawful, it is our duty to execute and enforce the statutory provisions applicable thereto.

*Decision on the Merits.*

Prior to February 2, 1891, all window shades were in the first class of the Official Classification. At that date the carriers determined that plain mounted shades were entitled to a lower classification and placed them in the second class, leaving all other kinds of shades in class 1. This first and second class rating for window shades remained undisturbed by the carriers until January 1st of the present year, when they abolished the second class rating for plain mounted shades, and returned to the practice in force prior to February, 1891, of charging first class rates on all window shades. The defendants participated in this action, and the new classification is in force upon their roads. The action of the

carriers, in so far as it resulted in consolidating the classification of window shades into one class, should be approved. Under Classification No. 11, in force prior to January 1, 1894, while plain mounted shades were given second class rates, the unmounted or otherwise unfinished article, so long as it came properly under the designation of window shade, was chargeable at first-class rates—more than the plain, finished article. Again, the above findings indicate that through the employment of machinery in shade decoration the difference in value between nine-tenths of the decorated shades and those which are left plain, without any decoration, is only 20 cents a dozen. For the purposes of transportation rating this difference, or any approximate sum, is trifling, and the carriers were not justified in placing plain and machine decorated shades in different classes. On both of these grounds, therefore, the action of the carriers in putting all shades in a single class is to be commended. But we have searched the evidence in vain to find any justification for the carriers' course in placing all shades in the first instead of a lower class. We think that in this respect their action was arbitrary, and that the facts point to the necessity of a reduction rather than an increase in the rating of this article for transportation purposes. The evidence is undisputed that economies introduced in the manufacture of window shades since 1887 have reduced the value of the cheaper grades fully two thirds and effected a still more marked decrease in the value of the higher grades. This extraordinary reduction of values carries with it a corresponding diminution in the risk which carriers assume in contracting to safely transport the freight to destination.

All of the materials used in shade making are, as shown in the eighth finding, classified by the carriers in the third class or lower, with the single exception of a second class rating for less than carload shipments of aniline dyes; but these dyes are in the fourth class when shipped in carloads. Curtain fringe, in the first class, might be regarded as another exception, but it is only attached to the better grades, and those constitute but a small proportion of the volume of shade traffic. The value of the roller, slat, and fixtures, and cost of labor

required to manufacture, are insignificant in comparison with the value of the cloth or hollands which form the body of the shade. The excess in value of this single article over the combined value of all other material used in the construction of a complete window shade is so great that of two cases similar in bulk and weight, one containing plain window hollands and the other complete shades, the case containing hollands has, as shown in the tenth finding, very much greater, and sometimes double, market value. Yet the carriers have carried for several years and still continue to carry, plain cloth or hollands at third class rates, and it must be presumed that such rating for the cloth or hollands is neither unreasonably low nor unprofitable to the carriers. Moreover, practically all the other materials used in the production of shades are transported by them at the same or lower rates.

As to the volume of shade traffic offered for transportation, we have it on defendants' own showing, by the table in the eleventh finding, that complainants' shipments amounted to considerably more than two and a half million pounds during a period of six months in 1892-93, and there is no proof or suggestion that the complainants have anything like a monopoly of the manufacture of shades. They are large producers; but the manufacturers at New York, Oswego, Meriden, Providence, and Jersey City, in the east, and at Chicago, St. Paul, and perhaps at other points in the west, also produce largely, and actively compete for the trade of various markets reached by the defendant and other lines.

In the elements of bulk, weight, and value, several of the dry-goods articles described in the table set out in the sixth finding as taking third class rates have greater similarity to a 23-dozen case of finished shades than exists between such a case of shades and the first-class articles mentioned in that table. There is, however, little analogy in uses or character between window shades and the dry-goods articles referred to. With the exception of lace curtains, these articles are dry-goods in the piece; and lace curtains are in the category of ornamental house furnishings, while the window shade is regarded as a household necessity. But the fact that both shades and lace curtains are in the first class, the latter many

times more valuable, is an element to be noted, though against this it must be considered that many incongruities are unavoidable when the carriers undertake, as they do by the Official Classification, to divide the great mass of freight articles into practically six classes; and the desirability of simplicity in the classification is a feature which should not be overlooked. The items of similar bulk and weight, less value and risk of carriage, and important volume of traffic, are all in the direction of giving to window shades a classification as low as that which is provided for window hollands.

So far, we have considered this question without reference to the rates themselves. Rates between New York and Chicago constitute the basis upon which rates to other points in eastern territory are adjusted. These rates between New York and Chicago are to-day exactly what they were on April 1, 1887, to wit: 75, 65, 50, 35, 30, and 25 cents respectively, on the classes 1 to 6, inclusive. Thus, while through economy in manufacture the value of shades has been enormously reduced since April, 1887, as herein shown, the rate between the points named remains the same, that is, the first class rate of 75 cents per hundred pounds. This fact, standing alone, would perhaps indicate little, for the introduction of great economies in manufacture has been common to very many articles of commerce; but it becomes matter of some significance when considered in connection with the other facts that the relation in point of value of window shades and window hollands, the constituent commodity, has been reversed in the intervening time, so that now a similar case of the latter is the more valuable commodity, and that since 1887 the carriers have reduced the classification of hollands to third class, while they have recently raised the classification of plain shades to first class, where other shades have been continuously.

In comparing window shades and hollands for the purposes of this case, we have based our considerations upon the 1,200-yard case of hollands and a case of similar size containing shades. But finished shades are frequently shipped in smaller packages, many of which contain only one dozen shades. If a shipment consisting of one dozen shades and

weighing not above 25 pounds were charged for carriage by defendants at one fourth of the hundred pound rate, this would be a very material element in this case. But this is not the fact. A 25-pound shipment pays as much as a hundred pound shipment; and so does a shipment weighing 75 pounds. This, we think, affords the carriers a sufficient margin for any extra expense involved in billing, handling, and delivering consignments of less than one hundred pounds. A case similar in size to that which holds 1,200 yards of hollands holds about 23 dozen shades. If these shades should be sent in 23 different packages to one consignee, it is possible that their transportation would involve some additional labor and time in handling than is involved in the transportation of a 23-dozen case of shades. But we are not altogether assured of this; the comparatively light 25-pound package may be easily and quickly handled, while a case weighing approximately 500 pounds is a heavy and cumbersome article. It should also be noted in this connection that the carriers, who make the classification, have not attempted to prescribe different classes for different sizes of packages containing either window shades or hollands. Any quantity of shades can be shipped at first class rates and any quantity of plain, uncut hollands at third class rates. It may be that hollands are very seldom shipped in small packages, while shades frequently are so shipped. But considering the rule of charging for one hundred pounds on shipments of less weight, the ease with which small packages containing non-breakable material can be handled, the fact that the carriers do not make a distinction in classification between small and larger packages, and that mathematical exactness in rating is impracticable, we do not think that the single circumstance of frequent shipment in small packages should out-weigh the other weighty reasons herein set forth for a change in window shade classification to third class; especially, when the article with which shades are mainly compared may, whatever the actual custom is, be freely shipped under the classification at third class in any quantity, weight, or size of case, and when it may be inferred from the evidence, as shown by the table in the eleventh finding, that in point of tonnage the greater




number of pounds of shades shipped is represented by shipments in large cases.

From a 1,200-yard case of hollands and the other necessary and comparatively very cheap materials, fifty dozen shades can be made, and these will more than fill two cases, each similar in size and weight to the average case filled with hollands. If the western manufacturer who buys his case of hollands in the east and pays third class rates thereon to the factory should be enabled to ship shades at the same rates, he will enjoy much greater advantage than he has under the present adjustment of third class for hollands and first class for shades, so far as shipping out from his factory is concerned. As to the trade of Chicago, the manufacturer at that point must pay the rate on hollands from the east, but shades which he manufactures therefrom are already in that market; while the eastern manufacturer must pay a rate on shades to Chicago in addition to the cost of getting material to his factory. Moreover, the Chicago maker is at least as favorably situated as the eastern manufacturer in the matter of obtaining raw materials other than hollands. Neither, in view of the fact that the 50 dozen shades which can be made from a case of hollands must pay greater total transportation charges than the case of hollands even at the same rate per hundred pounds, are we able to see how makers or dealers in hollands or shade cloth can suffer disadvantage from a reduction of the rate on shades. This brings us to notice the theory of comparison advanced in behalf of the defense that as 1,200 yards of hollands will make 50 dozen shades, the whole 50 dozen must, on account of cost of other material and of manufacture, be worth more than the 1,200-yard case of hollands, and therefore shades should pay higher rates than hollands. 50 dozen shades *are* worth more than a case of hollands, and it is not contended in this case that such a quantity of shades should be carried for a *total charge* to the shipper as low, or anything like as low, as is paid by the shipper on a case of hollands. On the contrary, the whole 50 dozen shades do now, and will under third class rates, pay the carriers very much greater total transportation charges than those afforded by third class rates on a case of hollands. For example: An average case of hollands weighs

533 lbs., and the third class rate New York to Chicago of 50 cents will amount to a total transportation charge of \$2.67; while sending the 50 dozen shades in one dozen packages of 25 lbs. each, or a total of 1,250 lbs. at the third class rate, will give the carriers an aggregate sum for transportation of \$6.25; and even when the shades are sent in two 23-dozen cases, each weighing 495 lbs., or together 990 lbs., the third class rate will amount to a total of \$4.95, and 4 dozen out of the 50 dozen shades have been left out of calculation. It is thus demonstrated, even on the theory of comparison insisted upon by the defense, that under third class rates for both hollands and shades the carriers will receive full and proportionate compensation for carrying the greater bulk and weight of the entire 50 dozen shades over the bulk and weight represented by the case of hollands from which that quantity of shades can be made, while the difference in value and risk of carriage between a case of hollands and that quantity of shades is very small.

We can see no shipping or manufacturing interests which will be unjustly affected by reducing the rating on shades to third class. On the contrary, we are convinced, from the great reduction in value which has taken place since April, 1887, and the arbitrary increase of shade classification by the carriers during the progress of this proceeding, and upon all the other facts and considerations herein which pertain to the rights of shade shippers and consignees generally, and of purchasers of that article of household necessity, that the classification of window shades as first class in the Official Classification has become unjust; and that the legal duty of defendants under the statute to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry, requires them to classify window shades not higher than they class window hollands. This latter commodity having been in the third class for several years, such classification is, as before stated, presumably proper. The classification of shades should be reduced to that of "window hollands and shade cloth, plain, uncut, and undecorated," and order will be issued



directing defendants to base charges for the transportation of window shades accordingly.

In stating facts and deciding the questions herein we have been compelled, of course, to base calculations upon figures which appear in evidence; these figures may vary somewhat from those which pertain to the business of shade manufacturers other than complainants, but it is not believed that such variation, if in evidence, would materially affect the findings and conclusions set forth in this report.

None of the reasons which induce us to order a reduction of the less than carload rating for window shades apply to the question of a lower carload classification for that commodity. Neither window hollands, shade cloth, nor any of the other articles with which window shades have been compared in this case, and which are included under the head of dry-goods in the Official Classification, are given carload rates. In view of this fact and the different aspect put upon this case by our decision of the preliminary question, we do not feel called upon to pass upon the carload question in this report.

RHODE ISLAND EGG & BUTTER COMPANY, THE W. W. WHIPPLE COMPANY, GEORGE M. GRIFFIN, V. THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, MICHIGAN CENTRAL RAILROAD COMPANY, NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, BOSTON & ALBANY RAILROAD COMPANY, NEW YORK, NEW HAVEN, & HARTFORD RAILROAD COMPANY.

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Complaint filed August 11, 1893.—Answers filed September 19 to October 3, 1893.—Heard at Providence, R. I., February 8, 1894.—Memorandum filed May 26, 1894.

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1. A shipper should not be subjected to unnecessary restrictions as to the kind of case or package he shall use.
2. A rate which may be reasonable when applied to the transportation of egg cases as a disconnected service may be unreasonable if the carriage of returned cases at favorable rates is in fact a special service, the discontinuance of which would unduly burden the business of shipping eggs to points of sale.
3. Upon complaint of unreasonable classification and rating on returned empty egg cases from Providence, R. I. to Chicago, Ill., Burlington, Ia., and other western points,—*Held*, that the evidence presented is insufficient to enable the Commission to determine the question. *Held*, further, that the defendants and other carriers concerned should be allowed time to consider whether shippers generally are not unduly prejudiced by the increased rating complained of and take or refrain from taking action accordingly, and if the carriers fail to take satisfactory action, that the complainants and any other interested shipper or consignee should have leave, after a specified time, to ask to have the case reopened; and thereupon such other direction be given as will serve to bring in necessary parties defendant, by amended or supplemental complaint or otherwise, as may appear to be required.

*Stephen A. Cooke*, for complainants.

*C. E. Gill*, for N. Y. C. & H. R. R. Co. & M. C. R. R. Co.

*Frank Loomis*, for N. Y. C. & H. R. R. Co.

*Geo. C. Greene*, for L. S. & M. S. Ry. Co.

*Samuel Hoar*, for B. & A. R. R. Co.

MEMORANDUM.

*By the Commission:*

The controversy in this case relates to rates on empty egg cases from Providence, Rhode Island, to points west of Chicago, where eggs are gathered up and shipped in such cases to Providence. Broadly, the question involved in the specific complaint extends to rates on empty cases between eastern points generally, and egg-producing points west of Chicago.

It is alleged in the complaint:

1. That each of the three complainants is engaged at Providence, Rhode Island, in the purchase and sale of eggs as well as other commodities and is receiving continuously from points west of Chicago large quantities of eggs throughout the year in boxes or cases, which in the course of their business they have occasion to return empty to points west of Chicago to be refilled and used again in the transportation of eggs.

2. That the defendants above named are common carriers engaged in the transportation of continuous shipments of property between Providence, in the state of Rhode Island, and Chicago, in the state of Illinois, over continuous lines or routes formed by the connection of their respective railroads, according to common arrangement between them for continuous carriage and shipment, and are subject to the provisions of the Act to regulate commerce.

3. That defendants and other carriers operating railroads east of Chicago and the Mississippi river and north of the Ohio and Potomac rivers did on or about the 2d day of January, 1893, establish and put into effect a classification of freight articles, known as Official Classification No. 11, wherein "Egg Carriers or Cases, new or old," are denominated as articles of the first class. That said classification superseded and canceled the classification of freight articles adopted and put into effect by said defendants and other carriers on or about April 1, 1892, and called and known as Official Classification No. 10 and wherein "Egg Carriers or Cases new," were denominated as articles of the first class, and "Egg Carriers or Cases old," were denominated as articles of the third class. That rates of charge established, filed and published by said

defendant and other carriers for the continuous shipment of articles enumerated in said first and third classes of the Official Classification from Providence, Rhode Island, to Chicago, Illinois, for several years have been and now are 82 cents per hundred pounds for first class articles, and 55 cents per hundred pounds for third class articles.

4. That by reason of the aforesaid change in classification whereby "Egg Carriers or Cases old," were transferred from the third class in said Official Classification No. 10 to the first class in said Official Classification No. 11, the rate of charge for the continuous shipment of egg cases returned to consignors of eggs at Chicago and points westerly thereof, by complainants and other consignees of eggs at Providence, has been made and is unjust and unreasonable and in violation of the provisions of the Act to regulate commerce.

5. That said change in the classification of returned egg cases constitutes unjust discrimination against complainants and others, and further violates the provisions of said Act to regulate commerce in that a greater charge is exacted by said carriers from complainants and others than they charge or receive from other persons for like service rendered in the transportation of like kind of traffic; and as one among other instances thereof appearing from an inspection of said classification, complainants cite and set forth that while "Egg Carriers or Cases, new or old," are by said Official Classification No. 11 now in the first class, "Crates, N. O. S., new, empty" were placed in the first class of said Official Classification No. 10, and "Crates, N. O. S., old, empty," were placed in the third class of said Official Classification No. 10, and that said two kinds of crates are classed in like manner in said Official Classification No. 11, no change of classification having been made in regard thereto.

6. That said change in classification of returned empty egg cases subjects complainants and other dealers in eggs and the traffic in eggs generally to undue and unreasonable prejudice and disadvantage in violation of the provisions of said Act to regulate commerce.

7. That by way of specification under the foregoing allegations complainants show that the distinction between new and

old egg carriers or cases for transportation purposes is that the term "new" applies only to those which have not been used in egg transportation, while the phrase "old carriers or cases" applies principally, if not exclusively, to those having contained eggs transported by defendants and other carriers and returned by their lines to the original consignors. That it is only just and reasonable to charge a less sum for returning the empty package to be refilled and reconsigned than is in force for new packages not before used for carrying purposes, that this principle has been generally recognized by carriers, and an exception in the matter of egg cases is wrongfully discriminating and unduly prejudicial to dealers in eggs. That the basis for demanding lower charges for returned, or old, empty egg packages than for new packages lies in the fact that the return of the old package at a reasonable charge for the service is incidental and necessary to the continued profitable shipments of eggs by the same consignor and the purchase thereof by his consignees, the return of the empty package being practically a part of and connected with the shipment of the package when full. That many of the cars going west from eastern points are specially constructed dairy freight cars which have brought dairy products east at high rates and go back empty, and they can be and are profitably utilized by the carriers for the carriage of return empty egg cases. That the present classification and rating of old egg cases are actually much greater than the classification of the more valuable and very fragile article which they are designed to protect in the course of transportation, the cases being in the first class while eggs are in the second class and take a lower rate. That the increase in rate on returned empty egg cases caused by the said change of classification is so great as to practically destroy their value at Atlantic seaboard points.

8. That while this complaint is specifically directed only against the defendants above named, and for convenience the shipment of returned egg cases is described as being from Providence to Chicago, complainants state that many of their said shipments are to western points other than Chicago and the transportation is by other lines than those composed of the roads of the defendants herein. Therefore, to avoid

multiplicity of actions, it is suggested to the Commission that notice of the pendency of this proceeding be given to the several carriers, not defendants herein, who are parties to and have adopted said Official Classification No. 11, by service of a copy of this petition upon C. E. Gill, Chairman of the Official Classification Committee, whose office is at No. 143 Liberty Street, New York, N. Y., together with an order granting leave to said other carriers to come in as parties and be heard in this proceeding the same as if complaint had been made specifically against said carriers as to the carriage of returned egg cases to points reached by their several roads or lines.

The complainants pray for an order against the defendants and other carriers to whom leave may be granted to intervene herein to cease and desist from such violations of the Act to regulate commerce, and to change the classification of "Egg Carriers or Cases" which have been used from the first to the fourth class of said official classification, and to return or repay the complainants so much of the amounts paid by them since the said Official Classification No. 11 was put in force for the transportation of returned "Egg Cases or Carriers" as represent the increased rate upon such as they have forwarded to western points, and for general relief.

Upon the filing of said complaint an order was issued as follows:

It appearing upon an inspection of the petition in this proceeding that the questions raised are such that carriers not named as defendants have an interest therein, that is to say: The New York & New England Railroad Company, the Fitchburg Railroad Company, the Boston & Maine Railroad Company, the Central Vermont Railroad Company, the Grand Trunk Railway Company of Canada, the Chicago & Grand Trunk Railway Company, the New York Central & Hudson River Railroad Company as Lessee of the West Shore Railroad, the Delaware & Hudson Canal Company, and the New York, Lake Erie, & Western Railroad Company;

It is Ordered, That each of said carriers be furnished with a copy of said petition and of this order, and that they have leave to intervene as parties by filing notice of desire to do so



within twenty days from this date, in which case they will receive notice of hearing and may appear and be heard thereon if they desire.

And it is further Ordered, That any other common carrier upon whose line shipments of freight are carried under the classification of freight articles denominated "The Official Classification" may apply for a copy of said petition and file notice of intervention with the same effect as if specifically mentioned herein; and that a copy of said petition and of this order be also sent to C. E. Gill, Chairman of the Official Classification Committee, No. 143 Liberty Street, New York, N. Y.

Thereupon, the New York, New Haven, & Hartford Railroad Company, one of said defendants, made answer, admitting that the statements in the first and second paragraphs of the complaint are substantially correct; the same also as to the third paragraph, except in so far as the rates from Providence, Rhode Island, to Chicago, Illinois, are stated to be 82 cents first class and 55 cents third class, and claim they should be stated as 75 cents and 50 cents respectively. As for the fourth article, it admits the changes in classification as stated, but denies that as a result of such change any unjust or unreasonable rate had been established in violation of the Act to regulate commerce. This defendant further insists that its share of the through rate is barely sufficient to cover cost of service, and that in the matter of changes in classification it has taken no part other than to accept its proportion under agreed divisions on such freight; that even under the revised classification now in effect the rate is not excessive and that it would be unwilling to continue to handle such traffic on any reduced basis of earnings; that egg cases are more valuable and more fragile than ordinary freights and would therefore justify a higher rating in the classification. It submits that the transportation of cases filled with eggs at second class rates is much more profitable than the transportation of empty cases at first class. This defendant further insists that the transportation of egg cases, new or old, has nothing to do with the question of whether they have been once before transported filled or not; that its tariffs have

been arranged to enable it to secure a reasonable income for the service it performs. It denies any participation in any unjust or unreasonable rate as to this traffic or any undue or unreasonable preference or any discrimination.

Answers were also filed by the Lake Shore & Michigan Southern Railway Company, the New York Central & Hudson River Railroad Company, and the Boston & Albany Railroad Company. No other answers were filed. All the answers filed raised substantially the same issues as above set forth as to the New York, New Haven, & Hartford Railroad Company.

#### FACTS AND CONCLUSIONS.

There is no evidence in support of complainants' allegation of unjust discrimination in rates as between egg cases and similar articles of freight, *e. g.* crates. The sole question is whether the change in classification on January 2, 1893, whereby "Egg Carriers or Cases, old" were raised from third to first class, results in unreasonable charges for the transportation of such carriers or cases when returned to shippers of eggs. The complainants' case rests mainly upon the assertion that the first class rates now in force on egg cases are so high as to prohibit their shipment from Providence to Burlington, Ia., complainants' principal gathering station, and other western points, and that in the hands of the eastern consignee the cases are practically valueless. The change in classification was adopted and put in force by the various lines operating throughout the territory east of the Mississippi and north of the Ohio and Potomac rivers, and it affected the business of egg shippers and dealers generally throughout that section of the country. With the exception of the one now under consideration, no complaint directed against this change in the rating of old or returned egg cases has been filed. Eggs are picked up at producing stations, massed in considerable quantities at gathering or storing stations, and shipped for sale to dealers at market points. These dealers, who are generally commission merchants, naturally prefer not to assume the burden of collecting and returning to shippers

the cases used for bringing the eggs to the point of sale. A very large proportion of the shippers have also come to regard the practice of returning the cases as one which should not be followed, if, without too great additional expense, it can be avoided. While the testimony does not clearly set forth the reasons which have impelled shippers to join the commission men in this desire, we infer therefrom that the keeping of eggs for considerable periods by the method of "cold storage," which has become very common, has greatly influenced them in this regard, and that many producers and shippers prefer, as a matter of convenience, to send eggs in a "gift case," if such a case, satisfactory to the carriers, can be obtained by them at a cost considerably reduced from that of a more durable returnable case.

By Circular No. 1379, issued February 15, 1892, by the Joint Committee of Carriers having the Official Classification in charge, the following change in the classification applying to the transportation of eggs was notified to take effect April 1, 1892:

"Eggs, in patent cases or carriers, O. R. B. as follows: Cases to be of hard wood of the following dimensions: Covers, sides, and bottom, three eighths of an inch in thickness. Partitions, one-half inch in thickness. Cleats or cover, one inch in thickness, and one and three-eighths inches wide. No. 1 fillers to be used. Excelsior, cut straw or hay to be used in top and bottom of cases. Second class."

"Eggs, in patent cases or carriers:

"If in cases or carriers of material of less dimensions than as above provided, or if differently packed, O. R. B. First class."

It seems that this circular displeased both the commission men and the shippers; the commission men, because it gave lower rates on eggs packed in a returnable case of the material and dimensions prescribed, thus compelling a return to the practice of using such a package, called a No. 1 case by the trade, which had been largely abandoned by shipping in cheaper free or No. 2 cases; the shippers, because it compelled many of them to purchase a stock of new cases, practically prohibited the use of gift cases, and subjected them to very

considerable loss because contracts had already been made by the majority of the shippers for such cases as they intended to use. Protests against the new rule were made by the Philadelphia Produce Exchange, the Boston Fruit and Produce Exchange, a very large number of New York Receivers and Dealers in Eggs, the Ohio and Indiana Butter, Egg, and Poultry Association, and the Nebraska Butter and Egg Association. These protests assumed that the proposed change was made in order to prevent the eggs from being damaged in transit and save the carriers from the annoyance of innumerable claims for loss. It was strongly asserted in the protests that the gift, or No. 2 case, is a safe package, and that instances of carelessness on the part of such shippers in permitting freight handlers to do the loading, or in using second-hand No. 2 cases, should not be allowed to bring about a rule prejudicial to careful shippers. The New York dealers recommended the right to use barrels; also a few changes in the dimensions of the case prescribed in the circular as taking second-class rates when filled with eggs, and an amendment of the second provision in the circular so as to make it read:

“Eggs in patent cases or carriers:

“If in cases or carriers of material of less dimensions than as above provided, or if differently packed, *or if in old or second-hand cases of any dimensions*, or if in old barrels, O. R. B. First class.”

The Philadelphia dealers claimed that the case prescribed in the circular would be too costly to be given free with eggs sold, and the Boston Exchange agreed with them that such a case would have to be returned to shippers. The Ohio and Indiana Association said: “We submit that the transportation companies should, as in their own interest, aid and assist the shippers in car lots, and not as in their contemplated action discriminate against such shippers who are of necessity compelled by the demands of their trade to use the No. 2 (gift) case.” They recommended the exemption of a case made of elm, ash, oak, beech, sycamore, gum or cotton wood, and also proposed some changes in the prescribed thickness of the wood in different parts of the case.

The Nebraska Association protested against being forced to use returnable cases, but nevertheless asserted that a good No. 1 case, even though second-hand, should not be discriminated against, and claimed that a shipper "should have the right to use, without favor in classification of freights, any size case as best suits his purpose, provided such case is in good order at the time used."

In the claim just quoted, the Nebraska shippers state a principle which as a general rule shippers are entitled to insist that carriers shall observe, and we are inclined to think that it should govern in this case. A shipper should not be subjected to unnecessary restrictions as to the kind of case or package he shall use.

After Official Classification No. 10 was issued, but before April 1, 1892, the date on which it took effect, the Classification Committee, by Supplement No. 1 to said Classification No. 10, dated March 8, 1892, canceled the circular or advance notice of February 15, 1892, thus leaving the classification of eggs as it stood in Classification No. 9, namely, eggs in patent carriers or cases, O. R. B. second class. The circular or advance notice was therefore never put in force, and in this respect the classification has not since been changed. Although the circular against which so many shippers and dealers protested purported to state the classification of eggs, it dealt in reality with the case in which eggs should be shipped. As stated in the protests, and also asserted by the defense in this proceeding, if it had gone into effect the result would have been a general return to the practice of sending back egg cases to gathering points or to producers, and their being re-employed for shipping purposes. If the changes recommended by the New York dealers had been adopted by the carriers, the use of the returnable case would have been as certainly prohibited, even though the classification of returned or old cases had remained at third class, for eggs packed in second-hand or re-used cases would have been charged first class while eggs in the regulation case would have taken second class rates. This difference in a case holding, say 30 dozen eggs, and sent over any considerable distance, would exceed the value of the case. The carriers receded from their

intention to prescribe the kind of case which should be used, thus leaving the shippers free to exercise their choice, provided only that the case be safe for the purpose of carriage, but they increased the classification of old or used cases to first class. They did right in thus refraining from prescribing the use of particular cases in egg shipments, for such action would have worked hardship upon shippers who had an interest in sending eggs in the No. 2 or gift package. It would have been a favor in classification to the returnable case. They also did right in not adopting the recommendation of the New York dealers that all eggs sent in second-hand or old cases should pay first instead of second-class rates. It would have been a favor in classification to the gift case and have resulted in prohibiting the return of any kind of egg case.

Thus far the carriers seem to have strictly followed the principle stated by the Nebraska Shipping Association that a shipper "should have the right to use, without favor in classification of freight, any size case as best suits his purpose, provided such case is in good order at the time used."

But while the carriers placed no restriction upon the kind of cases to be used in shipping eggs, they, seemingly impressed by the protests against the general use of the returnable case, increased the rating of old or returnable cases from third to first class in Official Classification No. 11, in effect January 2, 1893, and have since continued such increased rating in force in Classifications Nos. 12 and 13. We say seemingly impressed by the protests, because the circular or advance notice above discussed would, as before shown, have had the effect of bringing the returnable case again into general use, while the ultimate action of the carriers was to restore the old classification as to eggs and the cases containing them, and to increase the rating on returned cases. The increase in rates on returned cases was, the defendants say, not only to bring in greater revenue, but also because the lower third class rates tended to encourage the use of unsafe second-hand cases and subject the carriers to many claims for damage. The evidence indicates that some shippers, when they found it advantageous under rates in force, used the No. 2 or gift case as a returnable case, and that eggs shipped the second or third time in such

cases were more liable to be damaged in transit. We agree with the complainants that, as a general proposition, carriers are under no obligation to receive freight improperly packed or in otherwise unsafe condition; but upon the point that eggs are invariably carried at owners' risk of breakage, we think that if the carriers choose to disregard such condition of owners' risk and invariably pay claims for breakage upon presentation, as appears to be the fact in this case, that the shippers thereby benefited are in no position to find fault with the practice of carriers in disregarding the rule. On the other hand, the propriety of retaining the condition of owner's risk of breakage in the classification might, upon such showing if complained against by a shipper of the same commodity whose breakage claim had been refused, be open to serious question. We also think it doubtful whether carriers are justified in making all egg shippers using returnable cases pay higher rates on returned cases because some careless consignors make a practice of shipping eggs in insecure packages. Whether carriers can properly give weight to such consideration in fixing the rates on returnable egg cases may depend somewhat upon the methods pursued by shippers and consignees in forwarding and receiving eggs. We infer from the protests and some of the other evidence in the case that many, if not most, carload shippers of eggs do their own loading, and that their consignees do their own unloading. If, through being relieved of this expense and being put to no additional cost of inspection, the carrier makes a corresponding allowance in the rate for carrying the eggs, this may possibly afford some justification for a rate on returnable cases which, while not subjecting the egg trade to unreasonable disadvantage, will serve to discourage the use of cases not in good repair. But under such circumstances the line of right is difficult to determine, and in this case the question is complicated somewhat by the uncontradicted testimony of a witness for the complainants to the effect that they, using returned cases as often as practicable, hardly ever had a claim on shipments in full carloads. Whether damage to egg shipments can properly be considered by the carriers in fixing rates on returned cases is

not determinable from the showing now before us in this proceeding.

The main question for determination is whether, in view of all the facts, the present rating on old or returned cases from Providence to western points is unreasonable. Its proper solution, however, may depend upon whether the return of egg cases is or is not a service incidental to, and connected with, the transportation of eggs. A rate which may be reasonable when applied to the transportation of egg cases as a disconnected service may be unreasonable if the carriage of returned cases at favorable rates is in fact a special service, the discontinuance of which would unduly burden the business of shipping eggs to points of sale. Before further considering this point it will be necessary to recite the additional facts in this case.

Although the evidence shows that the complainants' principal gathering and shipping point is Burlington, Ia., and that they ship eggs from that point and other places west of Chicago to Providence and return cases thereto in dairy line cars, which would otherwise go westward from points east of Albany without loading, their complaint is directed against the classification of old egg cases generally and rates resulting therefrom to Chicago and other points west. They do not attack the adjustment of rates to different points under the classification, but the classification itself.

West-bound class rates from Boston, Providence, New York, and other eastern seaboard points to Chicago are the same: 75, 65, 50, 35, 30, and 25 cents on classes one to six, respectively. Burlington, Ia., on the west bank of the Mississippi river, takes rates from the same points which are 122 per cent of Chicago rates, plus an arbitrary or bridge charge of 5 cents on the first three classes, and 4, 3, and 2 cents on the 4th, 5th, and 6th classes respectively. These class rates from these same points to Burlington are: 98, 84, 66, 47, 40, and 33 cents.

The National Despatch Fast Freight line, operating over the Central Vermont and Grand Trunk Systems and connections west, has in force certain differentials which result in lower class rates on west bound business. These differentials are in cents per hundred lbs.:



Classes	1	2	3	4	5	6
From Boston or Providence	10	8	6	4	4	3
" New York . . . .	15	12	9	6	5	4

Thus while the first class rate by the defendant and other trunk lines from Providence to Chicago is 75 cents and to Burlington 97 cents, the National Despatch line rate is 65 cents to Chicago and 87 cents to Burlington.

The third class rates formerly in force on old egg cases from Providence to Chicago was 50 cents by the direct lines and 44 cents by the National Despatch, and to Burlington it was 66 cents over the direct lines and 60 cents *via* the National Despatch. The change in the classification which took place on January 2, 1893, increased these class rates from Providence to Chicago and Burlington to the present rates of 75 and 97 cents, respectively, by the shorter lines, and to 65 and 87 cents by the National Despatch. But by Special Interstate Freight Tariff No. 126, effective November 25, 1893, the roads comprising the National Despatch Line established a special rate on returned empty egg cases from Providence to Burlington, Ia., of 54 cents per 100 lbs., 6 cents less than the old third class rate by that line, and a reduction from the National Despatch first class rate of 33 cents per 100 lbs. The special rate from Providence to Burlington, complainant's principal shipping point, was put in force about two months subsequent to the filing of this complaint by the Providence dealers against the New York, New Haven & Hartford and other roads leading west, and on March 3, 1894, about one month after the hearing of testimony in this case, the Central Vermont and other roads composing the National Despatch Line withdrew this special rate of 54 cents, and this action had the effect of restoring the regular National Despatch class rate of 87 cents on returned egg cases by this route from Providence to Burlington which had been in force from January 2, 1893, to November 25, 1893.

As before stated, complainants return their cases in dairy line cars which come east loaded with butter, eggs and other like produce. The evidence indicates that from points east of Albany many of these cars would otherwise return west-

ward without loading. On account of the differential, and also the special rate which was in effect, the complainants have largely patronized the National Despatch Line. They receive 7 or 8 carloads of eggs a week, each carload containing from four to five hundred cases, and the accumulation of empty egg cases at Providence and vicinity is therefore considerable. The complainants do their own gathering at Burlington and therefore are shippers therefrom as well as consignees at Providence. It is understood that they load and unload the cars with filled and empty egg cases, and that this is done without any expense to the carriers. These cases cost complainants at Burlington from 15 to 17 cents each. Complainants estimate their cost of cartage, etc., to be about 3 cents per case, but how they arrive at this figure is not shown. In view of the fact that the same team and labor employed to load, unload and cart full cases can be, and probably is, utilized in unloading, loading and carting empty cases, with but little additional time involved, it may be that this estimate of complainants is placed too high.

The cases are carried under an estimated weight of 10 lbs., and complainants generally load the car full. A carload of 500 cases yields the defendant carriers a revenue per car of \$48.50, or 9.7 cents per case from Providence to Burlington; but the defendants do not concede that the usual carload of returned packages contains more than 400 cases. The revenue on a car of 500 cases by the National Despatch amounts to \$43.50, or 8.7 cents per case. Under the third class rate of 66 cents by the defendant roads the carriers received \$33.00 per car, or 6.6 cents per case, and the National Despatch obtained at its regular third class 60 cent rate \$30.00 per car, or 6 cents per case, and under its special rate of 54 cents, \$27.00 per car, or 5.4 cents per case.

The Chicago 75 cent first class rate on a carload of 500 cases gives a revenue of \$37.50, or 7.5 cents per case, and the National Despatch differential rate of 65 cents amounts to \$32.50 per car, or 6.5 cents per case. Under the old 50 cent third class rate to Chicago, the carload brought \$25.00, or 5 cents per case to the carriers, and by the National Despatch differential it amounted to \$22.00, or 4.4 cents per case.

Thus, under the change from third to first class rates on January 2, 1893, the defendant and other trunk line carriers increased their revenue per car of 500 cases from Providence to Burlington \$15.50, and the National Despatch line increased their carload compensation between the same points \$13.50; but by the special rate of November 25, 1893, they made a reduction of \$16.50 per car, or \$3.00 per car less than they received prior to January 2, 1893, and the difference between the carload rate by the National Despatch and by the defendant and other trunk line carriers from November 25, 1893, to March 3, 1894, was \$21.50. It was testified for complainants at the hearing that since the increase of January 2, 1893, they had not returned half the number of cases which they did when third class rates were in effect; but we are not informed why this should have been so during the time the National Despatch special rate of 54 cents to Burlington was in effect.

About one half of complainants' cases are made of hard wood, and we assume that they are more durable and somewhat more expensive than the case commonly called the gift case. Complainants' cases and the returnable cases now in general use by other shippers are considerably lighter than those formerly known as "heavy returnable cases," which weighed about 25 lbs. each. The number of times a returnable case can be used depends upon the treatment it receives. It may be available for but one journey; it may serve for half a dozen and even a greater number of egg shipments. While the present rate of 9.7 cents per case over the defendant lines from Providence to Burlington, added to complainants' estimated cost of cartage, etc., of 3 cents per case, still leaves them a margin of from 2.3 to 4.3 cents less than the cost of one of their new cases (and using the case for about five shipments would practically make up the cost of such a case, and this margin would be increased by shipments under the National Despatch differential, which is 10 cents per hundred less) this does not take into account the cost of new fillers or the percentage of cases damaged in transit or lost in the course of complainants' distributing trade with towns in the eastern states. The value of gift cases at Burlington is not

shown, and it is probable that complainants also compare the cost of such a case with their cost of cartage and transportation from Providence to Burlington.

It is evident that the foregoing summary of facts does not enable us to determine whether the return of egg cases from Providence to Burlington should be viewed in the light of a special service, incidental and necessary to the shipment of eggs in the contrary direction, and it follows that the lack of evidence necessary to the solution of this preliminary question prevents us from coming to a definite conclusion concerning the propriety of the classification challenged in the complaint.

The action of the National Despatch Line carriers in establishing, after this complaint was brought, a special rate which was still lower than the old third class rating by that line is rather strong indication that the return of egg cases from Providence to Burlington is to be viewed in the light of a special service connected with the eastward transportation of eggs, and casts some doubt upon the reasonableness of the first class rating of old egg cases. Furthermore, their action in canceling such special rate subsequent to the hearing in this case is calculated to create a presumption of arbitrary and unwarranted action, either on their part as to such rate, or, if the special rate was proper, on the part of all the carriers in increasing the classification in January, 1893. But the National Despatch Line carriers are not parties to this proceeding. These carriers and all others interested were, it is true, given leave at the commencement of this case to intervene and be heard, but instead of intervening the Central Vermont and the other National Despatch carriers practically conceded the justice of the complaint by putting in a special rate of 54 cents. Such action, so far as the traffic by that route is concerned, warrants a belief in the excessive character of the higher rating which is not overcome by the fact that, for reasons not disclosed, they withdrew the special rate before the making of this report. But, as before stated, the National Despatch Line carriers are not actual defendants herein, and their conduct during the pendency of this proceeding, while significant upon the general question of reasonableness,

should not be held to conclude carriers over other lines who are parties hereto.

In consideration of the use of both gift and returnable cases in egg shipments, the action of the carriers in attempting to prescribe a particular case for egg shipments in the proposed circular of February 15, 1892, which would have brought about the general use of returnable egg cases, and then not only receding from this position, but going further in the contrary direction by raising the rating on old or returned cases, the successive increase in the classification of old cases from fourth to third class and then from third to first class, the concession and withdrawal of very favorable rates during the pendency of this controversy by carriers not actually parties hereto, the very limited range which the testimony has taken, and the desirability of having the proper classification of returned egg cases definitely determined, we think that time should be allowed to the defendants and the other carriers concerned to consider whether shippers generally who use returned cases are not unduly prejudiced by the increase to first class rates and take or refrain from taking action accordingly, and that from and after the first day of July next, the complainants and any other interested shipper or consignee may, if the carriers fail to take satisfactory action, ask to have the case re-opened; and thereupon such further direction will be given as will serve to bring in necessary parties defendant by amended or supplemental complaint or otherwise as may appear to be required, and it is so ordered.

Our inclination to treat the case in this way is strengthened somewhat by the fact, not hereinbefore mentioned, that by exceptions filed to Classification No. 11, and also to that which is now in force, shippers locally over the road of the defendant, the New York, New Haven & Hartford Railroad Company, have been and are able to return cases at fourth class rates. We find among our files a telegram from the General Freight Agent of this company in relation to this exception sheet, which states: "We return egg carriers and cases at fourth class from original consignee to original shipper between our own stations where we get full local

tariff or practically so, but we do not do so where we receive a small proportion of some through rate from a western line." We refrain from commenting at this time upon this very material concession to local shipments beyond saying that the explanation in the telegram referred to does not convince us that the difference in the rating of through and local shipments of returned egg cases is just.

While from the imperfect view of the situation which has been afforded we are unable to arrive at a definite conclusion concerning the reasonableness and justice of the classification complained of, there are some significant circumstances which impress us with a present belief that the increase from a third to a first class rating may have been too great an advance. We therefore recommend the carriers to give the question prompt and earnest consideration during the period allowed therefor.

REIGHT BUREAU OF THE CINCINNATI CHAMBER OF COMMERCE

V. THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY, LESSEE OF THE CINCINNATI SOUTHERN RAILWAY; THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY; THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY; THE WESTERN AND ATLANTIC RAILROAD COMPANY; THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY; THE ATLANTA AND WEST POINT RAILROAD COMPANY; THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA; THE GEORGIA RAILROAD COMPANY; THE GEORGIA PACIFIC RAILWAY COMPANY; THE NORFOLK AND WESTERN RAILROAD COMPANY; THE PORT ROYAL AND AUGUSTA RAILWAY COMPANY; THE RICHMOND AND DANVILLE RAILROAD COMPANY; THE SAVANNAH, FLORIDA AND WESTERN RAILWAY COMPANY; THE SEABOARD AND ROANOKE RAILROAD COMPANY; THE SOUTH CAROLINA RAILWAY COMPANY; THE WESTERN RAILWAY OF ALABAMA; THE WILMINGTON AND WELDON RAILROAD COMPANY; THE WILMINGTON, COLUMBIA AND AUGUSTA RAILROAD COMPANY; THE BALTIMORE, CHESAPEAKE AND RICHMOND STEAMBOAT COMPANY; THE CLYDE STEAMSHIP COMPANY; THE MERCHANTS' AND MINERS' TRANSPORTATION COMPANY; THE OCEAN STEAMSHIP COMPANY; THE OLD DOMINION STEAMSHIP COMPANY.

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HE CHICAGO FREIGHT BUREAU V. THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY; THE CHICAGO AND ALTON RAILROAD COMPANY; THE CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY; THE CINCINNATI, HAMILTON

AND DAYTON RAILROAD COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE EVANSVILLE AND TERRE HAUTE RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE LOUISVILLE, EVANSVILLE AND ST. LOUIS CONSOLIDATED RAILROAD COMPANY; THE PEORIA, DECATUR AND EVANSVILLE RAILWAY COMPANY; THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY; THE TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY; THE WABASH RAILROAD COMPANY; THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY, LESSEE OF THE CINCINNATI SOUTHERN RAILWAY; THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY; THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY; THE WESTERN AND ATLANTIC RAILROAD COMPANY; THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY; THE ATLANTA AND WEST POINT RAILROAD COMPANY; THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA; THE GEORGIA RAILROAD COMPANY; THE GEORGIA PACIFIC RAILWAY COMPANY; THE NORFOLK AND WESTERN RAILROAD COMPANY; THE PORT ROYAL AND AUGUSTA RAILWAY COMPANY; THE RICHMOND AND DANVILLE RAILROAD COMPANY; THE SAVANNAH, FLORIDA AND WESTERN RAILWAY COMPANY; THE SEABOARD AND ROANOKE RAILROAD COMPANY; THE SOUTH CAROLINA RAILWAY COMPANY; THE WESTERN RAILWAY OF ALABAMA; THE WILMINGTON AND WELDON RAILROAD COMPANY; THE WILMINGTON, COLUMBIA AND AUGUSTA RAILROAD COMPANY; THE BALTIMORE, CHESAPEAKE AND RICHMOND STEAMBOAT COMPANY; THE CLYDE STEAMSHIP COMPANY; THE MERCHANTS' AND MINERS' TRANSPORTATION COMPANY; THE OCEAN STEAMSHIP COMPANY; THE OLD DOMINION STEAMSHIP COMPANY.



Decided May 29, 1894.

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1. If railway companies engaged in the transportation of traffic from one territory voluntarily enter into an association with railway companies engaged in the transportation of similar traffic from another territory to a common market, for the purpose, among others, of a mutual adjustment of rates over their respective lines, and in pursuance of this purpose as members of such association agree to maintain rates over their own lines higher than are reasonable, and the relation thus established between the rates from the two territories, respectively, is unjustly prejudicial to the former and unduly preferential to the latter, this is a violation of the first paragraph of section 8 of the Act to regulate commerce, for which, whether or not there be a joint liability under said Act of the two systems of carriers, there is at least a several liability on the part of those serving the territory injuriously affected.
2. Where the reasonableness of rates is in question, comparison thereof may be made, not only with rates on another line of the same carrier, but also with those on the lines of other and distinct carriers—the value of the comparison being dependent in all cases upon the *degree* of similarity of the circumstances and conditions attending the transportation for which the rates compared are charged.
3. The influence of water competition *via* the Atlantic on rail rates from northeastern cities to southern territory is not so great, as appears by the proof in these cases, as to account for or justify the difference between the mileage rates from those cities and the mileage rates from Chicago and Cincinnati to such territory under the rates complained of, and the fact of that influence on rates from the former cities cannot be invoked as a justification of rates from the latter, which, after due allowance for such influence as a substantially dissimilar circumstance, still appears on comparison of the two sets of rates to be *unduly* preferential to the former and *unjustly* discriminative against the latter. In rates from different territories to a common market, “relative equality is necessary in the *degree* of the similarity” of circumstances and conditions attending the transportation in the two cases.
4. The fact which is made to appear in these cases, that rates on traffic of the numbered classes from Chicago and Cincinnati to southern territory are made *higher* than they otherwise would be, for the purpose of securing to the lines from northeastern cities the transportation of that traffic from the territory set apart to them under the Southern Railway & Steamship Association Agreement, itself raises a *prima facie* presumption of the unreasonableness of those rates.

5. Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages, and no departure from the rule requiring rates in all cases to be reasonable in themselves can be justified on the ground that it is necessary in order to maintain existing trade relations, or to "protect competing markets," or to "equalize commercial conditions," or to secure to carriers traffic from certain territory assumed to be exclusively theirs.
6. The division of territory between the eastern and western lines provided for in the Southern Railway & Steamship Association Agreement is without warrant in law and appears to be made for the benefit of the carriers without regard to the interests of shippers in the territory so divided, to whom it is in effect a denial of the privilege of shipping their goods or produce to market by the line or route they may prefer.
7. The "fines" or "penalties" imposed by the provisions of the agreement of the Southern Railway & Steamship Association on members for violation of association rules appear on the face of that agreement to be available as substitutes for payments which would be exacted under a regular pooling system, and the arrangement under which they are imposed is tantamount to a combination, contract or agreement "for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof," which are forbidden by the statute.
8. The requirement of the agreement of the Southern Railway & Steamship Association that its members apply "full local rates upon all traffic subject to the Association Agreement coming from or going to" connecting lines which do not maintain Association rates, while to traffic from other connecting lines conforming to such rates full local rates are not applied, is repugnant to that clause of § 3 of the Act to regulate commerce which forbids carriers to "discriminate in their rates and charges between connecting lines."

For the Cincinnati Freight Bureau, *E. P. Wilson* and *Mortimer Matthews*.

For the Chicago Freight Bureau, *James E. Munroe* and *N. G. Inglehart*.

For the Cincinnati, New Orleans & Texas Pacific Railway Company and the Alabama Great Southern Railway Company, *Edward Colston*, *Charles M. Cist* and *George Hoadly, Jr.*

For the Louisville & Nashville Railroad Company, *Edward Colston* and *S. R. Knott*.

## REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complaints in these cases, which were heard and may be disposed of together, were filed, respectively, by the Freight Bureau of the Cincinnati Chamber of Commerce and the Chicago Freight Bureau. The former will hereinafter be referred to as the Cincinnati case, and the latter as the Chicago case.

In both complaints, Baltimore, Philadelphia, New York, Boston and contiguous territory are designated "Eastern Seaboard Territory;" Knoxville and Chattanooga, Tenn., Rome and Atlanta, Ga., Birmingham, Anniston and Selma, Ala., Meridian, Miss., and contiguous territory, "Southern Territory;" and Cincinnati, Ohio, Louisville, Ky., Indianapolis and Evansville, Ind., Chicago and Cairo, Ill., St. Louis, Mo., and contiguous territory, "Central Territory." These designations will be so applied in this opinion.

The general ground of complaint in the Cincinnati case is that the rates of freight established by the defendant carriers from the Eastern Seaboard and Central territories, respectively, to Southern territory, "unjustly discriminate in favor of the merchants and manufacturers whose business is located and transacted in Eastern Seaboard territory and against the merchants and manufacturers whose business is located and transacted in Cincinnati and other points in Central territory." It is stated that "the burden of the complaint lies against the relation which exists between the current rates of freight on *manufactured articles and merchandise*" (numbered classes) "from Eastern Seaboard territory to Southern territory, and the current rates of freight exacted upon like commodities when shipped from Central territory to the South, and against the unfair basis of general construction of the tariffs under consideration whereby the rates charged for transportation of commodities classified under 'numbered classes' bear a much higher percentage relation to the rates from New York than do the rates on commodities enumerated under the lettered

classes" (food products and similar heavy traffic); and it is alleged "that this improper relation between rates has the effect of restraining and impeding the growth of productive industries in Central territory and encouraging and promoting similar industries in Eastern Seaboard territory, and is the direct result of an agreement established by convention between the officers of defendants, whereby, in order to secure stability in rates and to prevent competition between the lines leading respectively from the Eastern Seaboard and Central territories to the South, it was decided to secure to the Eastern lines and Eastern territory the traffic in merchandise and manufactured articles and to the Western territory the traffic in food products and similar heavy commodities." In support of these charges as to the alleged "improper relation" between the rates from Eastern territory and Central territory to Southern territory, and between those on the numbered and lettered classes, tabular statements are given of the distances, and class rates from leading points in the Eastern and Central territories to the points named above in Southern territory and of the percentage relation borne by rates and distances from Cincinnati to those from New York.

The complaint in the Chicago case contains similar tabular statements and charges, made applicable to Chicago, and in addition calls in question the *reasonableness in themselves* of the through rates from Chicago to Southern territory by the averments "that traffic between Chicago and the Southern territory is through traffic and it is unjust to Chicago that rates from that point should be exacted by defendants based upon unreasonably high rates between Cincinnati and other Ohio river crossings and Southern territory, to which are added substantially the local rates in effect from Chicago to Cincinnati and said other Ohio river crossings," and that "if Cincinnati rates are to be taken as a basis, the rates from Chicago to Southern territory should be some fair percentage above the rates from Cincinnati, or some other arbitraries above the Cincinnati rates as the present New York and Boston rates are above the rates from Baltimore." It is also alleged that "the same rates are charged from New York and from Boston to points in Southern territory whose distances

vary more than 500 miles," and it is claimed that "if equal rates prevail from points widely separated in Eastern territory,—such as New York and Boston,—to Southern territory, the same basis should govern in rate making to the same Southern points from stations in Central territory,—such as Cincinnati and Chicago, which are much nearer together than New York and Boston." The prayer of the complainants in both cases is for an order commanding the defendants to desist from the alleged violations of the Act to regulate commerce and requiring them to so adjust their several freight tariffs as to afford the merchants and manufacturers of Cincinnati and Chicago and other points in contiguous territory "a fair and equal opportunity to deliver their products to consumers in the South upon such terms of equality compared with their competitors in Eastern Seaboard territory, as their geographical position, commercial ability, and ample transportation facilities will justify."

In the Cincinnati case answers are filed by the Cincinnati, New Orleans & Texas Pacific Railway Company (lessees of Cincinnati Southern Railroad), the Alabama Great Southern Railroad Company, the Louisville & Nashville Railroad Company, the East Tennessee, Virginia & Georgia Railway Company, the Atlanta & West Point Railroad Company, the Central Railroad & Banking Company of Georgia, the Georgia Pacific Railway Company, the Norfolk & Western Railroad Company, the Port Royal and Augusta Railway Company, the Richmond & Danville Railroad Company, the Seaboard & Roanoke Railroad Company, the Western Railway of Alabama, the Baltimore, Chesapeake & Richmond Steamboat Company, the Merchants' & Miners' Transportation Company, the Ocean Steamship Company, and the Old Dominion Steamship Company. They all deny the general charge, that the rates over the respective lines of transportation from the Central and Eastern Seaboard territories to Southern territory unjustly discriminate against Central territory in favor of Eastern Seaboard territory. It is alleged in substance that the all-rail rates from Eastern Seaboard to Southern territory are determined by the combined rail-and-water rates from Boston, New York, Philadelphia, and Baltimore *via* Steamship

lines to Charleston and Savannah and thence by rail to the interior, and that the rates from Cincinnati and other points in Central territory are not thus controlled by water competition. The other allegations of the complaint stated above are also denied; and it is claimed by most of the respondents that the transportation in which they, as members of through lines from their respective territories to the South, are engaged, is not "*under a common control, management or arrangement, for a continuous carriage or shipment,*" within the meaning of those words as used in the first section of the Act to regulate commerce.

In the Chicago case answers are filed by the following railway companies: The Louisville, New Albany & Chicago, the Chicago & Alton, the Chicago & Eastern Illinois, the Cincinnati, Hamilton & Dayton, the Cleveland, Cincinnati, Chicago & St. Louis, the Illinois Central, the Louisville, Evansville & St. Louis, the Pittsburgh, Cincinnati, Chicago & St. Louis, the Terre Haute and Indianapolis, the Cincinnati, New Orleans & Texas Pacific (lessees Cincinnati Southern), the East Tennessee, Virginia & Georgia, the Alabama Great Southern, the Atlanta & West Point, the Central of Georgia, the Georgia Pacific, the Norfolk & Western, the Port Royal & Augusta, the Richmond & Danville, the Seaboard & Roanoke, the Western of Alabama, and the following steamship companies: The Baltimore, Chesapeake & Richmond, the Merchants' & Miners' Transportation, the Ocean, and the Old Dominion. These answers present substantially the same issues as are raised in the Cincinnati case. It will be noted, that in addition to the railroad and steamship companies made parties defendants in the Cincinnati case, the complaint in the Chicago case is filed against a number of railroad companies running from Chicago to Cincinnati and other Ohio river points. These roads allege that their "rates are confined to the Ohio river, and that the through rate to any point south of the Ohio river is made by adding their rates to the Ohio (exclusively made by them) to the rates established by the lines south thereof, to the point of destination, over which rates south of the Ohio they neither possess nor exercise any control whatever, either as to the making or enforcement

thereof." They also affirm the reasonableness of their rates north of the Ohio.

There are many argumentative averments and allegations of facts contained in the complaints and answers, which it is unnecessary to set forth here, as such as are deemed material will be stated further on and given due consideration.

**FACTS.**

1. The tabular statements mentioned above as being contained in the complaints purporting to show distances and class rates from Cincinnati and Chicago in Central territory and from Boston, New York, Philadelphia, and Baltimore, in Eastern Seaboard territory, to the points designated as being in Southern territory, and also giving the percentage relation borne by such distances and rates from Cincinnati and Chicago to those from New York, are found to be correct with a few immaterial exceptions. The following are those statements corrected and showing current rates and percentages:

**TABULAR STATEMENT OF DISTANCES, CURRENT RATES AND  
PERCENTAGES BETWEEN CINCINNATI AND CHICAGO  
AND NEW YORK, PHILADELPHIA, BOSTON, AND  
BALTIMORE AND SOUTHERN POINTS.**

**To KNOXVILLE, TENN.**

Classes.														per bbi.
From	Dist.	1	2	3	4	5	6	A	B	C	D	E	F	H
Cincinnati .....	290	76	65	57	47	40	30	20	26	23	19	34	38	33
Chicago .....	560	116	99	82	64	55	42	32	38	33	29	47	58	48
New York .....	735	100	85	70	55	48	40	36	40	36	36	48	55	72
Philadelphia .....	645	108	92	83	71	58	47	34	46	38	37	56	74	66
Boston .....	948	100	85	70	55	48	40	36	40	36	36	48	72	55
Baltimore .....	549	95	80	65	50	45	37	33	37	33	33	45	66	52
Percentage														
Cinn. of N. Y. ....	39	76	76	81	85	83	75	56	65	64	53	71	69	46
Chic. of N. Y. ....	78	116	116	117	116	115	105	89	95	91	81	98	105	67

**To CHATTANOOGA, TENN.**

Classes.														
From	Dist.	1	2	3	4	5	6	A	B	C	D	E	F	H
Cincinnati .....	335	76	65	57	47	40	30	20	26	23	19	34	38	33
Chicago .....	595	116	99	82	64	55	42	32	38	33	29	47	58	48
New York .....	847	114	98	86	73	60	49	36	48	40	39	58	78	68
Philadelphia .....	757	108	92	84	71	58	47	34	46	38	37	56	74	66
Boston .....	1,060	114	98	86	73	60	49	36	48	40	39	58	78	68
Baltimore .....	661	106	90	83	70	57	46	33	45	37	36	55	72	65
Percentage														
Chic. of N. Y. ....	70	102	101	95	88	92	86	89	79	82	74	81	74	70
Cinn. of N. Y. ....	40	67	66	66	64	67	61	56	54	58	49	59	49	49

**To ROME, GEORGIA.**

<i>Classes.</i>														
From	Dist.	1	2	3	4	5	6	A	B	C	D	E	F	H
Cincinnati .....	413	107	92	81	68	56	46	28	33	26	22	48	44	53
Chicago .....	673	147	126	106	85	71	58	40	45	36	32	61	64	68
New York .....	925	114	98	86	73	60	49	36	48	40	39	58	78	68
Philadelphia .....	835	114	98	86	73	60	49	36	48	40	39	58	78	68
Boston .....	1,138	114	98	86	73	60	49	36	48	40	39	58	78	68
Baltimore .....	739	107	92	81	68	56	46	34	45	37	36	55	65	72
Percentage														
Chic. of N. Y. ....	73	129	130	123	116	118	111	94	90	82	105	82	100	
Cinn. of N. Y. ....	45	94	94	94	93	93	94	78	69	65	56	83	56	78



FREIGHT BUREAU V. CINCINNATI, N. O. & T. P. R. CO. ET AL. 205

TO ATLANTA, GA.

*Classes.*

From	Dist.	1	2	3	4	5	6	A	B	C	D	E	F	H
Cincinnati.....	475	107	92	81	68	56	46	28	35	28	24	48	43	53
Chicago.....	733	147	126	106	85	71	58	40	47	38	34	61	68	68
New York.....	876	114	98	86	73	60	49	36	48	40	39	58	78	68
Philadelphia.....	786	114	98	86	73	60	49	36	48	40	39	58	78	68
Boston.....	1,089	114	98	86	73	60	49	36	48	40	39	58	78	68
Baltimore.....	690	107	92	81	68	56	46	34	45	37	36	55	72	65
Percentage														
Chic. of N. Y.....	84	129	128	123	116	118	118	111	98	95	87	105	87	100
Cinn. of N. Y.....	54	94	94	94	93	93	94	78	73	70	62	83	62	78

TO MERIDIAN, MISS.

*Classes.*

From	Dist.	1	2	3	4	5	6	A	B	C	D	E	F	H
Cincinnati.....	630	122	102	89	75	62	54	39	41	39	32	38	66	61
Chicago.....	723	134	109	91	76	63	55	41	45	43	36	39	74	63
New York.....	1,142	124	106	93	79	65	53	36	48	40	39	58	78	68
Boston.....	1,355	124	106	93	79	65	53	36	48	40	39	58	78	68
Percentage														
Chic. of N. Y.....	63	108	103	98	96	97	104	114	94	107	92	67	95	93
Cinn. of N. Y.....	55	98	96	96	95	95	102	108	85	97	82	65	85	90

TO BIRMINGHAM, ALA.

*Classes.*

From	Dist.	1	2	3	4	5	6	A	B	C	D	E	F	H
Cincinnati.....	478	89	79	68	55	47	36	32	33	26	22	43	44	37
Chicago.....	652	119	103	83	64	55	42	40	43	34	30	52	60	48
New York.....	990	114	98	86	73	60	49	36	48	40	39	58	78	68
Philadelphia.....	900	108	92	84	71	58	47	34	46	38	37	56	74	66
Boston.....	1,203	114	98	86	73	60	49	36	48	40	39	58	78	68
Baltimore.....	801	106	90	83	70	57	46	33	47	37	36	55	72	65
Percentage														
Chic. of N. Y.....	66	104	105	96	88	92	86	111	90	85	77	90	77	71
Cinn. of N. Y.....	48	78	81	79	75	78	73	89	69	65	56	74	56	54

## TO ANNISTON, ALA.

*Classes.*

From	Dist.	1	2	3	4	5	6	A	B	C	D	E	F	H
Cincinnati.....	476	107	92	81	68	56	46	28	33	26	22	48	44	42
Chicago.....	715	147	126	106	85	71	58	40	45	36	32	61	64	57
New York.....	949	114	98	86	73	60	49	36	48	40	39	58	78	68
Philadelphia.....	859	114	98	86	73	60	49	36	48	40	39	58	78	68
Boston.....	1,162	114	98	86	73	60	49	36	48	40	39	58	78	68
Baltimore.....	763	107	92	81	68	56	46	34	45	37	36	55	72	65
Percentage														
Chic. of N. Y.....	75	129	128	123	116	118	118	111	94	90	92	105	82	84
Cinn. of N. Y.....	50	94	94	94	93	93	94	78	69	65	56	83	56	62

## TO SELMA, ALA.

*Classes.*

From	Dist.	1	2	3	4	5	6	A	B	C	D	E	F	H
Cincinnati.....	598	108	102	88	71	59	47	32	33	26	22	52	44	37
Chicago.....	746	138	126	103	80	67	53	40	43	34	30	61	60	48
New York.....	1,080	114	98	86	73	60	49	36	48	40	39	58	78	68
Philadelphia.....	990	108	92	84	71	58	47	34	46	38	37	56	74	66
Boston.....	1,295	114	98	86	73	60	49	36	48	40	39	58	78	68
Baltimore.....	894	103	90	83	70	57	46	33	45	37	36	55	72	65
Percentage														
Chic. of N. Y.....	69	121	128	120	109	111	108	111	90	85	77	105	77	71
Cinn. of N. Y.....	55	95	104	102	97	98	86	89	69	65	56	90	56	54

2. The distances from the Eastern Seaboard cities in the above statements are *all rail*, while the rates are *rail and water*, or based on the rail-and-water rates; both the distances and rates from Cincinnati and Chicago are *all rail*. There are a number of steamship lines running from the Eastern Seaboard to Charleston, Savannah, and other southern ports, namely, the Ocean Steamship, the Mallory, the Morgan, the Clyde, and the Merchants' & Miners'; and the above combined *rail and water* rates appear to be made by adding the rate of the steamer lines to the rate of the all-rail lines from the ports to interior points. The actual mileage by water from New York to Charleston and Savannah is estimated at about 750 miles, but the rates of the steamer lines are made

on the basis of what is termed by the witnesses a "constructive mileage" of 230 miles to Charleston and 250 miles to Savannah, that is, the water rate from New York to Charleston is equal to the rail rate for 230 miles by land, and to Savannah, to the rail rate for 250 miles. The all-rail distance from New York to Charleston is 799 miles and to Savannah 914 miles. The following are the distances from Charleston and Savannah by rail to the interior points named:

From Charleston,		From Savannah,	
to		to	
Knoxville.....	533 miles.	Knoxville.....	520 miles.
Chattanooga.....	446 "	Chattanooga.....	483 "
Atlanta.....	308 "	Atlanta.....	295 "
Rome.....	367 "	Rome.....	367 "
Birmingham.....	475 "	Birmingham.....	462 "
Anniston.....	412 "	Anniston.....	399 "
Selma (Via E. T. V. & G.).....	561 "	Selma (Via S. F. R. R.).....	462 "
Meridian.....	671 "	Meridian (Via E. T. V. & G.).....	609 "

The sums of the "constructive" mileages of 230 miles from New York to Charleston and 250 miles to Savannah, plus the actual rail mileages to interior points above given, are shown by the following table:

Via Charleston.		Via Savannah.	
to		to	
Knoxville.....	763 miles.	Knoxville.....	770 miles.
Chattanooga.....	676 "	Chattanooga.....	683 "
Atlanta.....	539 "	Atlanta.....	545 "
Rome.....	597 "	Rome.....	617 "
Birmingham.....	705 "	Birmingham.....	712 "
Anniston.....	612 "	Anniston.....	649 "
Selma.....	791 "	Selma.....	712 "
Meridian.....	901 "	Meridian.....	919 "

These are what are termed the "rate making mileages" from New York by water to Charleston and Savannah and thence by rail to the interior points named, upon which the combined *rail-and-water* rates from New York are based. The rail-and-water rates from the Eastern Seaboard cities to southern territory practically control the all rail rates. The all-rail rates are the same as the rail-and-water rates to Knoxville, Chattanooga, Birmingham, Selma, and Meridian,

but to Rome, Atlanta, Anniston, and points east of a line drawn from Chattanooga through Birmingham, Selma, and Montgomery to Pensacola, the all rail rates are higher than the rail and water rates by the following differentials:

Classes.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Differentials in cents.....	8	6	5	4	3	2	2	2	2	2	3	4	4

3. The lines regularly engaged in the transportation of traffic from Cincinnati, Chicago, and contiguous territory, to Southern territory, are *all rail*. There appears to be no through water or rail-and-water line in regular operation for the transportation of traffic in the numbered classes between those territories. There is a line by lake from Chicago to Buffalo and from that point by rail or canal to New York, which has a *direct* effect on the rail rates between Chicago and the seaboard,—particularly the rates on grain and grain products. As to rates on articles of the higher classes, the influence of the water competition does not appear to be so controlling. The rates from Chicago to New York are the basis of the rates from Central and Trunk Line territory to the North-eastern seaboard, the latter being percentages of the former; and the water competition by lake and canal thus *indirectly* exerts an influence upon the rates to the seaboard from as far south as St. Louis and Cincinnati. Traffic may be transported by the lake and canal or lake and rail line from Chicago to New York and thence on the Atlantic to Charleston, Savannah, and other southern ports, and thence by rail to interior points in Southern territory, and there is evidence tending to show that in the past, some shipments have been made that way, but mostly of grain and heavy articles such as are embraced in class 6 of the Official Classification and the lettered classes of the Southern Classification. The traffic shipped from Chicago by lake to Buffalo and from that point by canal or rail to New York is principally wheat, corn, and other grains, which can be transferred through an elevator at Buffalo to the canal boat or car. If the transportation be continued by ocean to a southern seaport the same process of transfer is necessary at the seaboard, and these transfers add

to the expense. The "navigation season" by the lake and canal line lasts from April to December. In the winter this line suspends and the rail lines appear to advance their grain rates,—for example, in November during the navigation season in 1891, the all-rail rate on grain (except corn) was  $22\frac{1}{2}$  cts. per 100 lbs. and in May, 1892, the grain rate was 20 cts. per 100 lbs., but after the season of navigation closed the normal rate of 25 cts. per 100 lbs. was resumed. The time made by the steamship lines from eastern seaboard cities to Charleston and Savannah is much less than that made by lake and canal from Chicago to New York. The distance by canal is about 450 miles and that mode of transportation is much slower than by lake and ocean. During the season of 1891, the rates on wheat by *lake and rail* from Chicago to New York were approximately from 14 cts. to  $16\frac{1}{2}$  cts. per 100 lbs., and on corn from  $11\frac{1}{2}$  to 17 cts., and by lake and *canal*, on wheat from 8 cts. to 16 cts., and on corn from 7 cts. to 15 cts. The distance from Chicago to New York is 912 miles, and the present *all-rail* class rates (which have been in force since Dec. 17, 1888) are as follows:

	Cents per 100 lbs.					
Classes.....	1	2	3	4	5	6
Rates.....	75	65	50	35	30	25

The class 6 rate of 25 cts. per 100 lbs. is the regular normal rate on grain and grain products.

The following are the class rates by Ocean Steamship lines from New York to Savannah:

	Cents per 100 lbs.												Per bbl.
Classes.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rates.....	55	45	35	28	23	18	18	18	18	18	28	28	31

Merchandise may also be carried from Central territory by rail to Baltimore and thence by steamer to Charleston, Savannah, and other southern ports for shipment by rail to the interior. The class rates from Cincinnati to Baltimore are:

	Cents per 100 lbs.					
Class.....	1	2	3	4	5	6
Rates.....	62	$58\frac{1}{2}$	$40\frac{1}{2}$	$27\frac{1}{2}$	23	$18\frac{1}{2}$

4. The rates on through shipments from Chicago *via* the Ohio river crossings—Cincinnati, Louisville, and Evansville—to points in Southern territory, are not prorated the entire distance but are the sum of the regular rate to the Ohio, of the roads north of that river, plus that of those south. The shipments are almost invariably, however, under a through bill of lading, quoting a total through rate (made up as above stated) and issued at Chicago by the agent of the initial carrier, and the goods when in car loads are carried through without transfer or “breaking bulk” at the river. When shipments are in less than car loads, it is stated a transfer is generally made at the river because of the disinclination of the southern roads to pay for the use of cars of other roads. The rates both north and south of the river appear to be influenced to a large extent by competition of the various railway lines, and are not, strictly speaking, local rates. The rates of the roads north of the river are lower per mile than those of the southern roads, this being attributed to the greater volume of tonnage in the territory of the former than in that of the latter. The effect of prorating on a mileage basis the rate from Chicago to points in southern territory would be to advance the proportion of the lines north of the Ohio and to reduce the proportion of the lines south. The rates for transportation between Chicago and the Ohio are what are known as Trunk Line rates, and are governed by the Official Classification, and those for transportation between the Ohio and Southern territory are governed by the Classification of the Southern Railway & Steamship Association. The class rates and distances by the short lines from Chicago to the Ohio river points—Cincinnati, Louisville, and Evansville—and to Cairo, are shown below:

To	Distances.	Rates in cents per 100 lbs.					
		1	2	3	4	5	6
Cincinnati .....	298 miles.	40	34	25	17	15	12
Louisville .....	304 “	42	36	27	19	17	14
Evansville .....	287 “	40	34	25	17	15	12
Cairo .....	364 “	45	35	25	20	15	12

(The distances and rates from Cincinnati to points in Southern territory are hereinbefore given in the tables taken from the complaints.)

In the tables of rates which we have given, those containing only the six numbered classes are under the Official Classification, which is applied east of Chicago and the Mississippi and north of the Ohio and Potomac rivers, and those embracing also lettered classes are under the Classification of the Southern Railway & Steamship Association, which applies south of the Ohio and Potomac and east of the Mississippi rivers. As above stated, grain and grain products fall under class 6 of the Official Classification; in the Southern Classification, grain and its products and heavy freight are in the lettered classes. Manufactures and costly commodities are in the higher classes.

5. It appears from tariffs on file with the Commission that there were in existence when the Interstate Commerce Law was passed, and up to April 17, 1893, through rates from New York *via* Cincinnati to Chattanooga, Meridian, and Birmingham, less than the sum of the rates to Cincinnati and the rates thence on to those cities, and there are such rates still in effect to Nashville, Memphis, Mobile, and a number of Mississippi river points.

Those through rates to Chattanooga, Meridian, and Birmingham, were as follows:

1	2	3	4	5	6
$\frac{1}{114}$	$\frac{2}{98}$	$\frac{3}{86}$	$\frac{4}{73}$	$\frac{5}{60}$	$\frac{6}{49}$

The following are the rates from New York to Cincinnati:

1	2	3	4	5	6
$\frac{1}{65}$	$\frac{2}{57}$	$\frac{3}{44}$	$\frac{4}{30}$	$\frac{5}{26}$	$\frac{6}{22}$

6. The tables below show the average receipts per ton per mile, the estimated cost of carrying a ton a mile, and the number of tons hauled per mile of line, as reported for the years ending June 30, 1890, and 1891, by the roads named therein, being (1) certain of the roads north of the Ohio engaged in transportation of traffic from Chicago to the Ohio, (2) certain of the roads north of the Potomac forming parts

country, according to the same authority, for those years, are as follows:

	1890.		1891.		1892.	
	Revenue per ton per mile.	Cost per ton per mile.	Revenue per ton per mile.	Cost per ton per mile.	Revenue per ton per mile.	Cost per ton per mile.
Roads in United States	Cts. .941	Cts. .604	Cts. .895	Cts. .583	Cts. .896	Cts. .582

8. The carriers made parties defendant in the Chicago case may be divided into three classes: (1) those north of the Ohio participating in the transportation of traffic to that river; (2) those south of the Ohio and continuing the transportation from that river to Southern territory, and (3) those participating in the transportation from Eastern to Southern territory. The defendants in the Cincinnati case embrace the two classes last named.

The roads of the defendants north of the Ohio, except the Illinois Central, do not extend south beyond the river, and are distinct in their organization and ownership from their southern connections. The Illinois Central crosses the river at Cairo and runs south *via* Holly Springs (near Memphis) to New Orleans. At Cairo it connects and forms through lines with roads to Southern territory. The roads constituting through lines from Chicago to Cincinnati, Louisville, and Evansville (Ohio river points) respectively, appear to be principally the following: to Cincinnati, the Cleveland, Cincinnati, Chicago & St. Louis; the Pittsburg, Cincinnati, Chicago & St. Louis; the Louisville, New Albany & Chicago, and the Cincinnati, Hamilton & Dayton; to Louisville, the Pittsburg, Cincinnati, Chicago & St. Louis and the Louisville, New Albany & Chicago; to Evansville, the Chicago & Eastern Illinois and the Evansville & Terre Haute.

The defendants mainly engaged in the transportation of traffic from Cincinnati to Southern territory appear to be the Louisville & Nashville and the Cincinnati, New Orleans &



## III.

## ROADS SOUTH OF OHIO AND POTOMAC.

Name of Road.	1890.		1891.		Tons carried per mile of line.	
	Average receipts per ton per mile.	Estimated cost of carrying one ton one mile.	Average receipts per ton per mile.	Estimated cost of carrying one ton one mile.		
	Cents.	Cents.	Cents.	Cents.	1890.	1891.
L. & N. R. R. ....	.972	.590	.968	.614	6,647	6,887
C. N. O. & T. P. ....	.921	.581	.876	.626	5,725	5,967
E. T. V. & G. Ry. ....	.870	.560	.905	.609	2,697	2,722
C. R. R. & B. Co., of Ga. ....	1.902	1.428	1.529	1.012	1,295	no data
N. & W. R. R. ....	.522	.329	.569	.383	5,900	5,008
R. & D. R. R. ....	1.310	1.090	1.416	.951	1,163	1,071

7. The "revenue per ton of freight per mile" and *average* cost of carrying one ton one mile on all roads in Southern territory (Group V.) and on roads in Central territory (Groups III. and VI.) as shown in the reports of the Statistician of this Commission for the years ending June 30, 1890, 1891, and 1892, are given below :

	1890.		1891.		1892.	
	Revenue per ton per mile.	Cost per ton per mile.	Revenue per ton per mile.	Cost per ton per mile.	Revenue per ton per mile.	Cost per ton per mile.
	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Roads in Southern territory .....	1.061	.705	1.018	.690	.958	.660
Roads in Central territory.    { Group 3	.695	.470	.690	.477	.674	.470
{ Group 6	.961	.593	.858	.532	.983	.597

NOTE.—Group 3 embraces that portion of Central territory east of Illinois and Group 6, that portion west of Indiana.

The "revenue per ton of freight per mile" and "average cost of carrying one ton one mile" on all the roads in the

country, according to the same authority, for those years, are as follows:

	1890.		1891.		1892.	
	Revenue per ton per mile.	Cost per ton per mile.	Revenue per ton per mile.	Cost per ton per mile.	Revenue per ton per mile.	Cost per ton per mile.
Roads in United States	Cts. .941	Cts. .604	Cts. .897	Cts. .583	Cts. .898	Cts. .582

8. The carriers made parties defendant in the Chicago case may be divided into three classes: (1) those north of the Ohio participating in the transportation of traffic to that river; (2) those south of the Ohio and continuing the transportation from that river to Southern territory, and (3) those participating in the transportation from Eastern to Southern territory. The defendants in the Cincinnati case embrace the two classes last named.

The roads of the defendants north of the Ohio, except the Illinois Central, do not extend south beyond the river, and are distinct in their organization and ownership from their southern connections. The Illinois Central crosses the river at Cairo and runs south *via* Holly Springs (near Memphis) to New Orleans. At Cairo it connects and forms through lines with roads to Southern territory. The roads constituting through lines from Chicago to Cincinnati, Louisville, and Evansville (Ohio river points) respectively, appear to be principally the following: to Cincinnati, the Cleveland, Cincinnati, Chicago & St. Louis; the Pittsburg, Cincinnati, Chicago & St. Louis; the Louisville, New Albany & Chicago, and the Cincinnati, Hamilton & Dayton; to Louisville, the Pittsburg, Cincinnati, Chicago & St. Louis and the Louisville, New Albany & Chicago; to Evansville, the Chicago & Eastern Illinois and the Evansville & Terre Haute.

The defendants mainly engaged in the transportation of traffic from Cincinnati to Southern territory appear to be the Louisville & Nashville and the Cincinnati, New Orleans &

Texas Pacific; and those constituting parts of the principal rail lines from Eastern to Southern territory appear to be the East Tennessee, Virginia & Georgia, the Norfolk & Western, and the Richmond & Danville. The Norfolk & Western extends northeast to Hagerstown, and the Richmond & Danville, to Washington. None of the defendant railroads, except the two last named, cross the Potomac, and the roads over which the traffic from the Eastern seaboard cities—Boston, New York, Philadelphia and Baltimore—is transported to connecting lines leading to Southern territory *are not made defendants*. The ocean steamship companies having lines from northeastern cities to southern ports and forming parts of the combined rail-and-water lines *via* those ports to interior points in Southern territory are made defendants, and also the roads leading from the ports to the interior.

9. All the defendants (including the steamship lines) in the Cincinnati Case are also defendants in the Chicago Case and are for the most part members of the Southern Railway & Steamship Association. The latter case, as before stated, embraces as defendants, in addition to those in the former, roads north of the Ohio participating in the transportation of traffic from Central territory to that river. *None of these are members of the Southern Railway & Steamship Association except the Illinois Central Railroad*, which, as we have seen, extends into territory south of the Ohio. This Association is composed of transportation lines (including the steamship lines from Northeastern cities to southern ports) engaged in the traffic of the territory south of the Potomac and Ohio rivers and east of the Mississippi, and the rates involved in these cases from both Eastern and Central to Southern territory are established and maintained under its rules and regulations. As to the origin of this Association, it is set forth in a report of March 4, 1891, by Commissioner Wilson to the Cincinnati Freight Bureau (which report was put in evidence), that "subsequent to the close of the war and closely following the re-establishment of transportation lines and through rates into the south, there arose lively competition between what are known as Eastern Coastwise Lines and the Western lines which reached the south from the west *via* Ohio and Mississippi

river gateways. Each commenced operations in the territory of the other, and while corn from Chicago was carried *via* Boston and Charleston to Atlanta and Chattanooga, the manufactured products of the East were not infrequently brought west *via* Cincinnati and Louisville, or Chicago and Cairo, for delivery to southern destinations. Rate wars were much more fierce and frequent than they are now. It was to check competition of this character and to protect the revenues of transportation lines generally that the Southern Railway and Steamship Association was established."

The records of the proceedings of the Association from as far back as 1878 and up to January 14, 1892, have been introduced in evidence. From these records it appears that in 1878, the roads leading south from Chicago, St. Louis, Cincinnati, Louisville, and other western cities (then combined in an organization known as the "Green Line"), met in convention with the steamer lines from eastern cities and the roads south of the Potomac engaged in the transportation of eastern traffic. At this meeting its object was disclosed to be "to protect to the Green Line Roads *the business which is peculiar to the northwest*, and to the eastern lines, *the business peculiar to their territory*, and to maintain equal rates on business common to the two sections." The Green Line rates appear to have then been advanced and the rates of the two systems of carriers adjusted with a view to the transportation by western lines of *western products* (that is, products from territory west of Pittsburg and east of the Mississippi, and between the Ohio and the lakes) and the transportation by eastern lines of *eastern manufactures*.

Up to 1885 this adjustment of rates appears to have been the means employed to carry out the above-stated object of the convention of 1878. In 1885 a division of territory was established and a provision was inserted in the agreement for that year requiring the exaction of local rates by the Eastern and Western lines, with a view to the protection to those lines, respectively (so far as it was possible in that way), of what is termed "the revenue derived by them from transportation."

By a resolution adopted by the Executive Committee of the Association in April, 1885, it was provided in connection with the division of territory above referred to that "in case Eastern Lines take Western business or Western Lines take Eastern business, they are to pay the *pool*, the entire revenue accruing thereon from points of junction with Association roads, to be given to the lines composing the Eastern or Western Lines as the case may be." The agreement of that year and those of subsequent years up to at least as late a date as that of the agreement which terminated July 1, 1887, make provision for such pooling or as it is termed "actual apportionment." In those agreements two methods of apportionment are provided for—namely, apportionment of *tonnage* and apportionment of *revenue*. Subsequent agreements do not so distinctly provide for pooling, but in the last agreement introduced in evidence (that of January 14, 1892), it is declared that "the principle of an apportionment of business subject to arbitration shall be recognized in the operation of the Association so far as this can be *lawfully* done." Provision is also made in that and the last agreement entered into since the hearing in these cases, for raising a fund for payment of what are termed fines for violations of the agreement, as will hereinafter appear.

The provisions as to division of territory and the exaction of local rates have been carried forward in the various agreements entered into from 1885 to the present time. The last agreement introduced in evidence is that dated January 14, 1892, and it is substantially the same as those of preceding years as far back as 1885. Its clauses as to the exaction of local rates and division of territory are as follows:

"Art. II., Sec. 2. For the mutual protection of the various interests, and for the purpose of securing the greatest amount of net revenue to all the companies parties to this agreement, it is agreed that what are termed western lines shall protect the revenue derived from transportation by what are known as eastern lines, *under the rates as fixed by this Association*, so far as can be done by the exaction of local rates, and that eastern lines shall in like manner protect *like* revenue of western lines."

"Sec. 3. That a line from Buffalo through Salamanca, Pittsburg, Wheeling, and Parkersburg, to Huntington, West Virginia, be made the dividing line between eastern and western lines for the territory hereinafter outlined. That the western lines shall not make joint rates from points east of that line for any points east of a line drawn from Chattanooga through Birmingham, Selma, and Montgomery to Pensacola."

"Sec. 4. The eastern lines, including the Richmond & Danville Railroad *via* Strasburg or points east of Strasburg, and the East Tennessee, Virginia & Georgia Railway *via* Bristol, shall not make joint rates on traffic from points west of that line (Buffalo, etc.) to any points on or west of a line drawn from Chattanooga through Athens, Augusta, and Macon, to Live Oak, Florida."

"Sec. 5. The traffic from Buffalo through Salamanca, Pittsburg, Wheeling, and Parkersburg to Huntington, West Virginia, and points on that line, to and east of Chattanooga, Calera, and Selma, shall be carried by either the eastern or western lines only at such rates as may be agreed upon."

"Sec. 6. It is understood that the eastern and western lines will co-operate in the enforcement of the 3d and 4th sections of this second article."

The objects of the Association as alleged in the preamble to this agreement are: "the establishment and maintenance of tariffs of uniform rates, to prevent unjust discrimination such as necessarily arises from the irregular and fluctuating rates which inevitably attend the separate and independent action of transportation lines," and the securing as to business in which the carriers have a common interest "a proper co-relation of rates, such as will protect the *interests of competing markets* without unjust discriminations in favor of or against any city or section."

The traffic embraced in the agreement is defined in Sec. 1 of Art. 2, as follows:

"The traffic subject to this agreement shall be (a) all business for which two or more of the parties hereto compete, having origin and destination with the territory of this Association, that is, south of the Virginias and south of the Ohio river and east of the Mississippi river; and (b) all traffic

between territory on or north of the southern boundaries of the Virginias and on or north of the Ohio river and west of the Mississippi, and the territory south of such southern boundaries of the Virginias and the Ohio river, and east of the Mississippi river, *except*, that traffic to or from a local point on any line shall be considered local to that line, and so far as that line may be concerned, shall not be subject to this agreement, and further *except*, that traffic between points on the Ohio and Mississippi rivers, or between points on the Ohio and Mississippi rivers and points north of the Ohio and west of the Mississippi, shall not be subject to this agreement."

The agreement provides for an annual convention of the representatives of the several companies, members of the Association, at which each company shall have one vote, two-thirds of the whole vote of the members present being required to make the action of the convention binding. At this meeting, among other business to be transacted, there are to be elected a President, a Commissioner, a Secretary, and three Arbitrators. The members of the Association are each required to designate a representative, authorized "to represent them in all matters of business with the Association or its members," and the representatives so designated constitute an "Executive Board." The "Executive Board," it is provided, "shall have jurisdiction over all matters relating to traffic covered by the agreement, but shall act only by *unanimous consent* of all its members" and "in the event of failure to agree, the questions at issue shall be settled by the Board of Arbitration." The "Executive Board" are authorized "at their discretion, to appoint *Rate Committees* and other subcommittees, either of their own number or from among the officers and agents of the Companies; members of the Association." It is provided that, "with a view to a proper relative adjustment of all rates, and especially a proper relative adjustment of rates on similar articles from the East and West to common territory, the *Rate Committees* shall have *sole authority to make all rates and classifications on all traffic covered by the agreement*, subject to decision of the Commissioner, the Executive Board, or Board of Arbitration in case

such Rate Committees cannot agree." If the "Rate Committees" fail or omit to make rates, the Commissioner is given authority to make such rates, so that, it is stated, "there shall be properly authenticated tariffs of rates on all traffic covered by the agreement." The sub-committees appointed by the "Executive Board" can "only act by *unanimous consent*, and failing to agree, the questions at issue may, upon demand of any member, be referred to the Executive Board for action at their next meeting, and such questions may be submitted direct to the Board of Arbitration, when so authorized by a majority of the Executive Board." The decisions of the "Board of Arbitration" are made "final and conclusive on all questions which may be submitted to them under the agreement or by consent of the parties." The Commissioner is Chairman of the Executive Board, and also of the sub-committees, and is authorized to represent absent members of sub-committees as well as of the Executive Board, and "during the interim between the reference of any matter of difference from a sub-committee to the Executive Board and the final determination of such matter," he is given authority, "if he deem it a matter requiring prompt action, to decide it temporarily," and his decision is made "binding on all parties until reversed by the Executive Board or by arbitration;" he is declared to be "the chief executive officer of the Association, and as a representative of its members, both *severally and jointly*," is empowered to "act for them in all matters which come within the jurisdiction of the Association, in conformity with the requirements of the agreement and the instructions of the Executive Board and sub-committees, but *exercising his discretion in all cases* which are not provided for either by the agreement or by the Executive Board and committees acting under its authority and sanction;" and he is also authorized "to reduce the rates when necessary to meet the competition of lines or roads not parties to the agreement and at the same time to make corresponding reductions from other points from which relative rates are made," and is given "such authority over the traffic officers and their subordinates and over the accounting departments of the parties to the agreements as may be necessary to enforce its terms



relative to the maintenance of rates." When rates have been fixed under the provisions of the agreement by the Rate Committees, the Commissioner, the Executive Board, or by arbitration, there is to be "no reduction from such rates without the consent of the Commissioner," and in all cases changes therein are to be made by the Rate Committees or the Commissioner. The agreement declares "that the maintenance of rates as established under the rules of the Association is of its very essence, and that the parties thereto pledge themselves to require all their connections to maintain such rates, and in the event of any company or line, or its connections, not members of the Association, failing to conform to this obligation, the other parties in interest *pledge themselves to increase their proportion of through rates sufficiently to protect the authorized rate whenever required by the Commissioner to do so;*" and further, that it is "one of the fundamental principles of the agreement that no party thereto shall take *separate* action in any matter affecting the interests of one or more of the other parties, contrary to the spirit and intent of the agreement," and that "all measures necessary to carry out the purpose of the agreement shall be taken *jointly* by the parties thereto." In cases of violation of the agreement, the Board of Arbitration, after hearing, is required to "impose such penalties therefor as it may deem proper and necessary to secure the maintenance of the rates of the Association." These penalties are to be enforced by the Commissioner, and "in order to provide for the prompt payment of any fines that may be assessed against any member of the Association for violating its rules, each Company is required to deposit with the Commissioner an amount equivalent to five dollars (\$5.00) for each mile of the road operated by said company under the provisions of the agreement, or in case a company operates a water line, five dollars (\$5.00) for each mile allowed as a prorating distance in the division of through rates—provided such amounts shall not exceed the sum of five thousand dollars (\$5,000) for any one company." Of this fund thus raised it is provided, that "any surplus over and above the amount that may be awarded by the Board of Arbitration to indemnify any members for losses sustained

shall be applied to the payment of the expenses of the Association."

The agreement now in force (made July 14, 1893, since the hearings in these cases) extends to the territorial line commencing at Buffalo and terminating at Huntington to "Toronto on the north shore of Lake Ontario, through Lewiston and Niagara Falls," and provides that points on this line (from Toronto to Huntington) "shall be common to lines through the Eastern and Western gateways, together with such points adjacent thereto from which the rates shall be the same as from the points above named" (points on said line) "through the gateways of Cincinnati and Louisville, the Rate Committees to agree upon the common points adjacent to said line." To the clause requiring members of the Association "to increase their proportions of through rates sufficiently to protect the authorized rates" in the event of any company or line or its connections not members of the Association failing to conform to the rates established by the Association, it adds the further requirement, that they (members of the Association interested) shall "*apply full local rates upon all traffic subject to the Association Agreement coming from or going to such offending lines, when required by the Commissioner to do so.*" The clause requiring the Board of Arbitration in cases of violations of the Agreement by any member, to impose "such penalties therefor as it may deem proper and necessary to secure the *maintenance of the rates of the Association,*" is altered so as to read "such penalties therefor as it may deem proper and *commensurate with the injuries inflicted upon the Association and of competing lines parties to this Agreement.*" The other material terms of this agreement are substantially the same as those of the agreement of January 14, 1892, above given.

The agreements of the Association appear to be made as a general rule, annually, to terminate on the 31st day of the July following the date of their taking effect. They purport to be renewals or reorganizations of the Association from year to year and to be binding only on the carriers signing them. That of January 14, 1892, was signed by the Illinois Central and all the defendants common to the two cases,

except the South Carolina Railway Company, the Clyde New York Steamship Lines, and the Wilmington, Columbia & Augusta Railroad Company. The present agreement is signed by the Illinois Central and all the defendants common to the two cases except the Norfolk & Western and Wilmington, Columbia & Augusta Railroad Companies and the Merchants' & Miners' Transportation Company. The agreement preceding that of January 14, 1892, was made July 25, 1888, to take effect August 1 of that year. The Western Roads, namely, the Cincinnati, New Orleans & Texas Pacific (Lessees of the Cincinnati Southern) the Alabama Great Southern, the Louisville & Nashville and the Illinois Central, did not sign this agreement and ceased to be members of the Association from the date of its taking effect, August 1, 1888, to January 14, 1892, when they entered into the agreement of that date. During this period of about three years and a half, the eastern lines alone were members of the Association, but the rates maintained by the western lines appear to have remained substantially as they were when those lines suspended their connection with the Association. In the following tables are given the class rates from Chicago and Cincinnati to points in Southern territory in force on December 31 of each year from 1887 to 1891, both inclusive:

From Chicago, Ill. To		Rates in cents per 100 pounds.												Per Bbl.
		1	2	3	4	5	6	A	B	C	D	E	H	F
Knoxville, Tenn.	1887	116	99	82	65	55	45	32	38	34	29	47	53	58
	1888	"	"	"	"	"	"	"	"	"	"	"	"	"
	1889	"	"	"	64	"	42	"	"	35	31	"	48	62
	1890	"	"	"	"	"	"	"	"	33	29	"	"	58
	1891	"	"	"	"	"	"	"	"	"	"	"	"	"
Chattanooga, Tenn.	1887	116	99	82	65	55	47	32	38	31	29	47	53	58
	1888	"	"	"	"	"	45	"	"	"	"	"	"	"
	1889	"	"	"	64	"	42	"	"	35	31	47	48	62
	1890	"	"	"	"	"	"	"	"	33	29	"	"	58
	1891	"	"	"	"	"	"	"	"	"	"	"	"	"
Rome, Ga.	1887	147	126	106	85	71	58	40	44	42	37	61	68	74
	1888	"	"	"	"	"	"	"	"	"	"	"	"	"
	1889	"	"	"	"	"	"	"	45	41	"	"	"	"
	1890	"	"	"	"	"	"	"	"	"	"	"	"	"
	1891	"	"	"	"	"	"	"	"	37	33	"	"	66
Atlanta, Ga.	1887	147	126	106	85	71	58	40	48	42	37	61	68	74
	1888	"	"	"	"	"	"	"	"	"	"	"	"	"
	1889	"	"	"	"	"	"	"	45	41	"	"	"	"
	1890	"	"	"	"	"	"	"	48	"	"	"	"	"
	1891	"	"	"	"	"	"	"	47	38	34	"	"	68
Birmingham, Ala.	1887	138	126	103	80	67	53	40	43	41	36	61	68	72
	1888	119	103	83	64	55	42	40	43	35	30	52	48	60
	1889	"	"	"	"	"	"	"	"	38	34	"	"	63
	1890	"	"	"	"	"	"	"	"	34	30	"	"	60
	1891	"	"	"	"	"	"	"	"	"	"	"	"	"
Anniston, Ala.	1887	147	126	106	85	71	58	40	44	42	37	61	68	74
	1888	"	"	"	"	"	"	"	"	"	"	"	"	"
	1889	"	"	"	"	"	"	"	45	41	"	"	"	"
	1890	"	"	"	"	"	"	"	"	"	"	"	"	"
	1891	"	"	"	"	"	"	"	"	37	33	"	"	66
Selma, Ala.	1887	124	113	87	69	59	45	32	43	37	32	61	68	65
	*1888	138	126	103	80	67	53	40	43	35	30	"	"	60
	1889	"	"	"	"	"	"	"	"	38	34	"	"	63
	1890	"	"	"	"	"	"	"	"	34	30	"	"	60
	1891	"	"	"	"	"	"	"	"	"	"	"	"	"
Meridian, Miss.	1887	146	133	113	89	74	54	41	45	43	37	55	66	78
	1888	134	109	91	76	61	55	41	43	43	36	35	63	74
	1889	"	"	"	"	63	"	"	45	"	"	39	"	"
	1890	"	"	"	"	"	"	"	"	"	"	"	"	"
	1891	"	"	"	"	"	"	"	"	"	"	"	"	"

(\*Effective Feb. 26th, 1888.)

**FREIGHT BUREAU V. CINCINNATI, N. O. & T. P. R. CO. ET AL. 225**

From Cincinnati, O., To	Rates in cents per 100 pounds.												Per Bbl.
	1	2	3	4	5	6	A	B	C	D	E	H	F
<b>Knoxville, Tenn.</b>													
Dec. 1887	76	65	57	48	40	33	20	26	23	19	34	38	38
" 1888	"	"	"	"	"	"	"	"	"	"	"	37	"
" 1889	"	"	"	47	"	30	"	"	25	21	"	33	42
" 1890	"	"	"	"	"	"	"	"	23	19	"	"	38
" 1891	"	"	"	"	"	"	"	"	"	"	"	"	"
<b>Chattanooga, Tenn.</b>													
Dec. 1887	76	65	57	48	40	33	20	26	23	19	34	38	38
" 1888	"	"	"	"	"	"	"	"	"	"	"	37	"
" 1889	"	"	"	47	"	30	"	"	25	21	"	33	42
" 1890	"	"	"	"	"	"	"	"	23	19	"	"	38
" 1891	"	"	"	"	"	"	"	"	"	"	"	"	"
<b>Rome, Ga.</b>													
Dec. 1887	107	92	81	68	56	46	28	32	31	27	48	53	54
" 1888	"	"	"	"	"	"	"	"	"	"	"	"	"
" 1889	"	"	"	"	"	"	"	33	"	"	"	"	"
" 1890	"	"	"	"	"	"	"	"	"	"	"	"	"
" 1891	"	"	"	"	"	"	"	"	27	33	"	"	46
<b>Atlanta, Ga.</b>													
Dec. 1887	107	92	81	68	56	46	28	36	31	27	48	53	54
" 1888	"	"	"	"	"	"	"	"	"	"	"	"	"
" 1889	"	"	"	"	"	"	"	"	"	"	"	"	"
" 1890	"	"	"	"	"	"	"	"	"	"	"	"	"
" 1891	"	"	"	"	"	"	"	35	28	24	48	"	48
<b>Birmingham, Ala.</b>													
Dec. 1887	108	102	88	71	59	47	32	33	32	28	52	57	56
" 1888	"	"	"	"	"	"	"	"	26	22	48	37	44
" 1889	89	79	68	55	47	33	"	"	30	26	43	"	32
" 1890	"	"	"	"	"	36	"	"	26	22	"	"	44
" 1891	"	"	"	"	"	"	"	"	"	"	"	"	"
<b>Anniston, Ala.</b>													
Dec. 1887	107	92	81	68	56	47	28	32	31	27	18	53	54
" 1888	"	"	"	"	"	46	"	"	"	"	"	"	"
" 1889	"	"	"	"	"	"	"	33	"	"	"	"	"
" 1890	"	"	"	"	"	"	"	"	"	"	"	"	"
" 1891	"	"	"	"	"	"	"	"	27	23	"	"	46
<b>Selma, Ala.</b>													
Dec. 1887	94	89	72	60	51	39	23	33	29	24	52	57	50
" 1888	108	102	88	71	59	17	32	"	26	22	"	37	44
" 1889	"	"	"	"	"	"	"	"	30	26	"	"	52
" 1890	"	"	"	"	"	"	"	"	26	22	"	"	44
" 1891	"	"	"	"	"	"	"	"	"	"	"	"	"
<b>Meridian, Miss.</b>													
Dec. 1887	134	123	106	84	70	56	39	41	39	32	54	64	66
" 1888	122	102	89	75	62	54	45½	49½	42	37	34	61	82
" 1889	"	"	"	"	"	"	39	41	39	32	54	"	66
" 1890	"	"	"	"	"	"	"	"	"	"	38	"	"
" 1891	"	"	"	"	"	"	"	"	"	"	"	"	"

In a "Report on Changes in Railway Transportation Rates" to the Senate Committee on Finance prepared by the Auditor of this Commission from data furnished by the roads, are given the rates on classified traffic and important commodities from Chicago and Cincinnati to Atlanta and Chattanooga in 1879 (the year after the Convention of 1878) and in 1891. Those rates and the differences between them are shown in the following tables:

## CHICAGO TO ATLANTA.

Date.	Cents per 100 pounds.											Cents per bbl.		
	1	2	3	4	5	6	Bagging and cotton ties.	Lard, meats, bacon, pork, and packed and loose meats, (C. L.)	Flour in sacks.	Grain.	Ale and Beer in wood.	Whiskey in wood.	Flour in barrels.	Beef and Pork in barrels.
1879.	150	129	108	88	73	58	53	58	58	53	63	88	106	195
1891.	147	126	106	85	71	58	40	47	38	34	61	68	68	*47
Differences.	3	3	2	3	2	—	13	11	20	19	2	—	38	

\* Cents per 100 pounds.

## CHICAGO TO CHATTANOOGA.

Date.	Cents per 100 pounds.											Cents per bbl.		
	1	2	3	4	5	6	Bagging and cotton ties.	Lard, meats, bacon, pork, and packed and loose meats, (C. L.)	Flour in sacks.	Grain.	Ale and Beer in wood.	Whiskey in wood.	Flour in barrels.	Beef and pork in barrels.
1879.	115	100	86	58	51	48	46	50	48	45	50	58	90	137
1891.	116	99	82	64	55	42	32	38	33	29	47	48	58	*38
Differences.	†1	1	4	†6	†4	6	14	12	15	16	3	10	32	

\* Cents per 100 pounds. † Excess of latter rate.

## CINCINNATI TO ATLANTA.

Date.	Cents per 100 pounds.												Cents per bbl.	
	1	2	3	4	5	6	Bagging and cotton ties.	Lard, meats, bacon, pork, and packed and loose meats, (C. L.)	Flour in sacks.	Grain.	Ale and beer in wood.	Whiskey in wood.	Flour in barrels.	Beef and Pork in barrels.
1879.	130	112	94	76	63	49	46	50	51	46	55	76	92	170
1891.	107	92	81	68	56	46	28	35	28	24	48	53	48	*35
Differences.	23	20	13	8	7	3	18	15	23	22	7	23	44	

\*Cents per 100 pounds.

## CINCINNATI TO CHATTANOOGA.

Date.	Cents per 100 pounds.											Cents per bbl.		
	1	2	3	4	5	6	Bagging and cotton ties.	Lard, meats, bacon, pork, and packed and loose meats, (C. L.)	Flour in sacks.	Grain.	Ale and Beer in wood.	Whiskey in wood.	Flour in barrels.	Beef and Pork in barrels.
1879.	95	83	72	46	41	39	37	42	41	38	42	46	76	115
1891.	76	65	57	47	40	30	20	26	23	19	34	33	38	*26
Differences.	19	18	15	†1	1	9	17	16	18	19	8	13	38	

\*Cents per 100 pounds.

†Excess of latter rate.

10. At the convention of the eastern and western lines in 1878, it was announced by Mr. Peck, General Manager of the Southern Railway & Steamship Association, that the western

lines "concede that the transportation of manufactured articles into the territory embraced by the Association should be left to the eastern lines, and undertake by *prohibitory* rates to prevent such articles from eastern cities reaching Association points over their lines." Accordingly a basis of rates was then adopted, by which rates on the western lines for "articles peculiar to the east" were to be at least 10 cents higher than the rates on the eastern lines, and rates on eastern lines for "western products" were to be at least 10 cents higher than the rates on western lines. At the time of this adjustment it appears that the west (or Central territory) contributed "principally food products in the solid and liquid forms of corn, bacon, flour, whiskey, etc.," for Southern consumption, while "manufactured articles and notions" came for the most part from the Eastern Seaboard. These conditions have, however, materially changed, "the centers of food production have moved Westward" and Central territory has engaged much more extensively in manufacturing enterprises. In the Annual Report made to the Southern Railway & Steamship Association by its Commissioner, July 6, 1889, he says: "Formerly, agricultural products constituted a large excess of the western business, but the proportion of miscellaneous commodities—traffic formerly from the east—is steadily growing from the west. Especially is this true in all manufactured articles of wood, such as furniture, wagons, carriages of all kinds, etc., and manufactures from the cheap grades of iron from the south, such as stoves, agricultural implements, etc." Central territory has also entered upon the manufacture on a large scale and shipment south of boots, shoes, clothing, saddlery, harness, and other articles of general merchandise. It is estimated that the manufactures in Central territory have increased 100 per cent in twenty years.

These manufactured articles are shipped south from Central territory under the rates applied to the numbered classes in the Southern Railway & Steamship Association Classification, and bagging, ties, grain (and its products, including liquors), and packing-house products are shipped under the rates applied to the lettered classes. The testimony is to the effect that articles falling within the lettered classes are of more



general consumption in the Southern territory than those in the numbered classes. No reliable data is furnished as to the proportion the south bound tonnage of the former bears to that of the latter, but it appears to be much larger. In their reports on file with the Commission the railways do not give separately the south bound and north bound tonnage, but it appears that boots, shoes, clothing, woodenware, furniture, saddlery, harness, groceries, and "everything that goes under the head of general merchandise," constituted in 1891 not quite 25 per cent of the total south bound tonnage of the Cincinnati, New Orleans & Texas Pacific Road, and that bagging, ties, grain (and its products), and packing-house products "covered the bulk of the business south bound."

Articles in the numbered classes manufactured in Wisconsin, Michigan, Illinois, Indiana, and Ohio, are sold as far east as Rochester and Albany, New York, as far west as the Pacific coast, and to a greater or less extent over the south from Texas and Arkansas to the Virginias. The testimony tends to show that in the southeast, in the territory embracing Alabama, East Tennessee, Florida, Georgia, the Carolinas, and Virginias, and particularly at points near the Atlantic coast, the merchants and manufacturers of Central territory meet with strong competition in the sale of these goods from New York and the other eastern seaboard cities. They do not appear to be driven out of this territory altogether by this competition, but their business and the profit on it are not so great as a general rule as in other markets reached by them. In some instances they are required by their customers to "equalize the rates," or in other words, to refund the excess of the rates on their goods over those on goods of the same kind and class from Eastern Seaboard territory.

11. L. R. Brockenborough, General Freight Agent of the Chicago & Eastern Illinois Railway Company (whose road runs from Chicago to the Ohio at Evansville), stated that "his impression (is) that the general impression seems to be that the rates from Central territory into Southern territory are out of line with those from the seaboard," and that his road "would be willing to reduce its rate to bring the through rate in line with the New York rate." John C. Gault, General

Manager of the Queen & Crescent System (in which are defendants, the Cincinnati, New Orleans & Texas Pacific and the Alabama Great Southern Companies), stated that he "always thought rates from Chicago to southern points on higher classes ought to be the same as those from Boston and New York;" and that this "would not harm New York and hardly be enough in favor of the west." He also, under date of August 14, 1888, wrote to the Commissioner of the Chicago Board of Trade, that "the roads interested in Chicago business ought in my (his) judgment to take such action as is necessary to insure a reduction of the rates" from the west. M. C. Markham, Assistant Traffic Manager of the Illinois Central R. R. Co., testified that he had made an effort to have the Southern Railway & Steamship Association reduce the rates from Central territory and said, "Looking at the disparity between the rates from Eastern and Central territories, it appears there might be in them an element of unfairness to the latter. If it is true that rates from Eastern territory into the southeast were made on account of water competition along the Atlantic seaboard, and if all rail lines leading from the east into that territory can afford to carry the goods for those rates made by water lines, then the western through lines *could afford to carry for the same rates a less distance*, provided all conditions governing the matter were equal." S. R. Knott, Traffic Manager of the Louisville and Nashville Road, in a letter to G. J. Grammar of April 14, 1890, wrote that "While the adjustment may be *unfair, as we think it is*, yet it can hardly be said to be arbitrary or wholly unreasonable;" and that his company, "together with other lines interested in western traffic, then members of the Southern Railway & Steamship Association, urged a modification of the difference" (between eastern and western rates) "and succeeded in having the matter brought, under the rules of the Association, before the Board of Arbitration;" and that "the question was fully presented from both sides of the case and the decision of the Board at that time (May, 1888) was that the best protection of *all interests* did not warrant the change in the adjustment of rates which we, with the other western lines, had requested, that is,

changing the adjustment from Ohio river points and points north as compared with the rates from eastern cities." B. E. Hand, Assistant General Freight Agent of the Michigan Central Road, stated that he had made "repeated efforts with railroads operating in Southern territory for a reduction of rates on manufactures from the west to the southeast." G. J. Grammar, Chairman of the Central Traffic Association's Committee on relations with southern roads, in a letter to N. G. Iglehart, of April 2, 1890, says: "All our efforts thus far have been unavailing to get the southern roads to more justly equalize the rates. You doubtless understand southern roads' rates from the Ohio river are arbitrary, their rates on all classes south bound being from 50 to 100 per cent greater per mile than by lines north of the river on similar traffic." In a letter dated April 8, 1890, to S. R. Knott, he says: "The injustice of the present basis of rates (from the Ohio) must of necessity be apparent."

#### CONCLUSIONS.

The principal charge in both cases, it is stated, is based on the first paragraph of section 3 of the act to regulate commerce, which declares:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The specific ground of complaint under this charge is in substance that the rates on *manufactured* goods from Eastern Seaboard territory to Southern territory, and those on the same classes of goods from Central territory to Southern territory, are so fixed or adjusted with reference to each other as to give to merchants and manufacturers in Eastern Seaboard territory an "undue or unreasonable preference or advantage" over those in Central territory, and consequently subject the latter to "an

undue or unreasonable prejudice or disadvantage" with respect to the former, when they meet in competition in southern markets.

The defendants embrace two groups of carriers, operating under distinct tariffs of rates different systems or lines of transportation, leading, respectively, from initial points and through territories widely separated to common destinations. As establishing the joint liability of these two sets of carriers, the complainants contend that the relation created between them (or such of them as are parties thereto) by the provisions of the Southern Railway & Steamship Association Agreement constitutes a "common control, management, or arrangement" in the sense in which those words are used in the first section of the interstate commerce law. From the view we take of these cases, it is unnecessary to determine this question of *joint* liability. The injury which, it is claimed, results from the relation between the rates from Eastern Seaboard and Central territories, is injury to merchants and manufacturers in, and shippers from, the latter; the complaints are in their behalf alone. This injury could not proceed from rates from Eastern Seaboard territory unreasonably *high*, in themselves or relatively, as the tendency of such high rates would be to give an advantage to dealers in Central territory. There is no claim—and if there were, there is no proof to sustain it—that the eastern rates are *in themselves* unreasonably low. Those rates stand unchallenged as to their reasonableness in themselves, and for the purpose of this argument must be considered as reasonable and just. If the roads serving Central territory voluntarily entered into an agreement with the Eastern Seaboard lines, in carrying out which they made their rates higher than was reasonable and than they otherwise would have made them, and the relation thus established between the rates of the two sets of carriers was unduly preferential to Eastern territory and unjustly prejudicial to Central territory, this was a violation on their part of the above clause of section 3 of the act. Whether or not there be a *joint* liability on the part of the eastern lines, there is unquestionably a *several* liability on the part of the lines serving Central territory for the unreasonableness of their own rates.

By entering into an agreement such as that of "The Southern Railway & Steamship Association," a carrier does not merge its separate corporate existence and cease to be a distinct entity, responsible as such under the interstate commerce law for the rates over its own road or line. In becoming parties to this agreement, the defendants act separately and voluntarily, they each have a representative on the "Executive Board" (which is given full jurisdiction over the matter of rates), and this Board can act only by "unanimous consent of *all* its members." The rates thus established for each road or line are to be considered the result of its own voluntary *several* action, so far as amenability to the law is concerned. Furthermore, the defendants north of the Ohio (except the Illinois Central), and the roads north of the Potomac and reaching northeastern cities as parts of the all-rail eastern lines, are not members of the Southern Railway & Steamship Association, and the latter roads are not made parties defendant though interested in the eastern rates. In view of the foregoing considerations, we deem it proper to treat these cases from the standpoint of the several liability of the defendants serving Central territory, both as to the rates over their lines, and the relation between those rates and the rates over eastern lines.

The defendant carriers north and south of the Ohio, serving Central territory, form through lines of connecting roads from Chicago, and those south of the Ohio, from Cincinnati, to Southern territory, and are engaged in the continuous carriage over those lines of interstate traffic under through bills and joint through rates. They are, therefore, in respect to such traffic and rates subject to the provisions of the act to regulate commerce, as we have repeatedly held. *Trammell v. Clyde S. S. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324; *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744; *Board of Trade of Troy v. Alabama M. R. Co.* 4 Inters. Com. Rep. 348.

The reasonableness in themselves of the rates from Central territory is a matter material to the issue raised by the charge in both cases, that the relation between those rates and the eastern rates is *unjustly* prejudicial to Central territory, and

the question is directly presented in the Chicago Case by the allegation that the rates from Cincinnati and other Ohio river crossings to Southern territory are "unreasonably high." Where the reasonableness of rates is in question, comparison may be made, not only with rates on another line of the same carrier, but also with those on the lines of other and distinct carriers,—the value of the comparison being dependent in all cases upon the *degree* of similarity of circumstances and conditions attending the transportation for which the rates compared are charged. It appears from the tabular statements in our findings of fact, giving *all-rail* distances and class rates from Cincinnati and Chicago in Central territory and from New York and other northeastern cities, to points in Southern territory, that on a *mileage* basis the rates from the former (particularly, those on the higher or numbered classes) are largely in excess of those from the latter. For the purpose of illustration the following table is given, which shows the current rates on goods of *Class 1* from Cincinnati and Chicago and from New York to points named in Southern territory, and what the rates from Cincinnati and Chicago would be on the basis of the (all rail) mileage rates from New York:

To	Current Class 1 Rates.			Rates on basis of mileage rates from New York.	
	From Cincinnati.	From Chicago.	From New York.	From Cincinnati.	From Chicago.
Knoxville.....	76	116	100	89	78
Chattanooga.....	76	116	114	45	79
Rome.....	107	147	114	51	83
Atlanta.....	107	147	114	61	95
Meridian.....	123	134	124	63	71
Birmingham.....	89	119	114	54	75
Anniston.....	107	147	114	57	85
Selma.....	108	138	114	63	78

The excess of the Class 1 rates in the above table from Cincinnati and Chicago over the New York rates from a mileage standpoint is as follows:

To	From Cincinnati.	From Chicago.
Knoxville.....	87	38
Chattanooga.....	81	37
Rome.....	56	64
Atlanta.....	46	52
Meridian.....	60	63
Birmingham.....	35	44
Anniston.....	50	62
Selma.....	46	60

As to the other *numbered* classes and the other northeastern cities, the relation or difference between the two sets of rates is to a large extent substantially the same as shown in the above tables.

Many striking disparities in rates will be observed on an inspection of the tabular statements of rates and distances in our findings of facts, and particularly, in the Class 1 rates from Chicago, on the one hand, and Boston and New York, on the other—the latter two cities being given for the most part the same rates. For example, while the distance from Chicago to Chattanooga is 595 miles, and from Boston and New York, respectively, 1060 and 847 miles, the rate from Chicago is 116 cents and from Boston and New York, 114 cents, and while the distance from Chicago to Meridian, Miss., is 723 miles, and from Boston and New York, respectively, 1355 and 1142 miles, the rate from Chicago is 134 cents, and from Boston and New York, 124 cents. Under the rate last named, a shipper of a car load of 25,000 lbs. of Class 1 goods from Boston and New York to Meridian would pay \$25.00 less than a shipper of a like car load from Chicago, notwithstanding the relative proximity of the latter city to the common point of destination. (Up to March 16, 1894, the rate from New York and Boston to Meridian was 114 cents.) Further examples of similar import might be taken from the tabular statements of rates and distances, but the above are deemed sufficient. A comparison of rates on one road or line with those on another, for the purpose of determining the reasonableness of either, is, as before stated, valuable only to the extent of the similarity of circumstances and conditions attending the transportation in the two cases; and relative equality in rates is only necessary in the *degree* of such

similarity. *Manufacturers & J. Union v. Minneapolis & St. L. R. Co.* 3 Inters. Com. Rep. 115, 4 I. C. C. Rep. 79. Distance or mileage is by no means the only, or in many cases the most important, factor in rate making, but, *other things being equal*, it is a circumstance of great, if not controlling, weight. In *Logan v. Chicago & N. W. R. Co.*, 2 Inters. Com. Rep. 431, 2 I. C. C. Rep. 604, the Commission hold that "a departure from the rule of equal mileage rates as applied to the several branches of a road or system of roads is not conclusive of the unlawfulness of rates, but the company making such departure should have satisfactory reasons for such variance of rates and must show them to be reasonable when disputed. This burden is by the act to regulate commerce put on carriers when they 'charge or receive as great compensation for a shorter as for a longer distance.' The same burden is on a company making a greater charge for one of two hauls." In *McMorran v. Grand Trunk R. Co. of Canada*, 2 Inters. Com. Rep. 604, 3 I. C. C. Rep. 252, it is said, "Due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges;" and, in reference to the burden of proof, where a carrier sets up dissimilarity of circumstances and conditions in the matter of expenses in justification of a disparity in mileage rates, it is said, "The evidence does not show with any precision what these several expenses (terminal and others) are . . . The defendants assume in their brief that the burden of showing these expenses was upon the petitioner; but this assumption is altogether erroneous. It would impose on persons conceiving themselves aggrieved by carriers a difficult and onerous rule of evidence. It would be impossible for the petitioners to show such facts otherwise than by defendants' agents, and it was clearly the province of the defendants to make them appear. No presumption arises that a rate is reasonable from the mere fact that it has been put in effect; and when it is *prima facie* disproportionate or relatively unequal the *onus* is on the carrier to justify its charges when challenged on these grounds. The knowledge of the justifying circumstances and conditions is peculiarly in the possession of the carrier."



The above, it is true, are cases where the rates compared were made by the same carrier for one or more branches of its own road or system, and not by distinct carriers for their respective roads or lines. This distinction, however, is material only as to the question of *joint responsibility*, and, while, as the defendants contend, the eastern carriers may not be liable under a strict construction of the interstate commerce law jointly with the western for the rates from Central territory, this fact does not under the circumstances showing a community of origin of the two sets of rates, affect the propriety or lessen the value of a *comparison* of them in an investigation (like the present) as to the reasonableness of the western rates. The rule laid down as to the burden of proof is peculiarly applicable to the present cases, in view of the fact that the relation between the eastern and western rates was fixed by mutual agreement between the two systems of carriers and, as the evidence tends to show, *for the accomplishment of a particular object* as hereinafter appears. The disproportion between the rates being so large, the burden was upon the defendants serving Central territory to justify the relatively high rates over their lines, or, in other words, to show the substantial dissimilarity of circumstances and conditions necessitating or authorizing such disproportionately high rates. The defendants, while disclaiming that it was upon them, nevertheless assumed the burden of proof and set up in justification of the comparatively high rates from Central territory the fact that the eastern rates are affected by water competition from the northeastern cities *via* the Atlantic to southeastern ports—particularly, the ports of Charleston and Savannah. No other dissimilar circumstance or condition explaining or authorizing the lower mileage rates from the east is alleged or proven. If there was anything in the way of fixed charges, operating expenses, or other matter proper to be considered in this connection and peculiarly within their own knowledge, they should have made proof of it. It did not devolve upon the complainants to negative the existence of such circumstances in the absence of evidence tending to make them affirmatively appear.

The plea that all rail lines from northeastern cities to Southern territory are subjected to water competition *via* the Atlantic, and that this competition has naturally a controlling influence on their rates, is sustained by the proof. In an argument filed in behalf of the Cincinnati, New Orleans & Texas Pacific, the Alabama Great Southern, and the Louisville & Nashville Companies (the only defendants who appeared at the hearing), it is contended that the fact of this water competition "takes the whole situation entirely out of the operation of the third section of the act and makes inapplicable any further comparison." On this point it is said:

"But it may be urged that although an inequality of charge may be so justified" (by water competition), "yet the inequality of condition and diversity of circumstances is not sufficient to warrant so great a disparity as is exhibited between the rates from Cincinnati, Ohio, to points in Southern territory, and the rates from New York, Boston, and other eastern cities to these points. This objection, however, is invalid, for the law is that once a substantial dissimilarity of circumstances and conditions appears, that fact takes the whole situation entirely out of the operation of the third section of the Act, makes inapplicable any further comparison, and forbids any attempt at a compulsory adjustment of the rates so as to allow for such dissimilarity. The section itself immediately ceases to apply."

This position is manifestly untenable. It is in effect a claim that a substantial dissimilarity of circumstances and conditions is, even after due allowance has been made therefor, a license to a carrier to go further and give *undue* preferences and practice all the other forms of *unjust* discrimination denounced by the statute. In *Raworth v. Northern Pac. R. Co.* 3 Inters. Com. Rep. 857, 5 I. C. C. Rep. 234, it is held that the law forbidding unjust discrimination "applies even in cases where a departure from the 'long and short haul rule' of the statute is shown to be authorized, and the right, if established, of making the greater charge for the shorter haul, does not justify a disparity in rates so great as to result in *unjust* discrimination;" and in the case of the *Manufacturers & J. Union v. Minneapolis & St. L. R. Co.* 3 Inters. Com. Rep. 115, 4 I. C. C. Rep. 79, the

rule is laid down that "relative equality is necessary *in the degree of similarity.*"

The defendants in their proof have furnished a measure or given *their estimate* of the influence of the water competition from the northeastern cities to the southeastern ports. It is that, while the distance by water from New York to Charleston and Savannah is approximately 750 miles, the rates by the steamer lines are made on the basis of what is termed a "constructive mileage" of 230 mile to Charleston and 250 miles to Savannah, or, in other words, the water rate from New York to Charleston is equal to the rail rate for 230 miles by land, and to Savannah, to the rail rate for 250 miles by land. These "constructive mileages" plus the actual distances by rail from those ports to interior points in Southern territory are called the "rate making mileages" upon which the combined rail and water rates from New York to the interior points are based. As is claimed by defendants, the proof tends to show that the rail and water rates regulate the all-rail rates, and the rail and water and all rail rates are the same to all the points named in Southern territory except *Rome, Anniston, and Atlanta*, to which the all-rail rates are higher than the rail and water by certain differentials ranging from 2 to 8 cts. per 100 lbs. as appears from our findings of facts. A comparison of these "rate making mileages" (rail and water) with the all-rail distances from New York to Southern points may be instructive as indicating the *estimate by the roads* of the extent of the influence of water competition on the eastern rates. Those "mileages" (*via* Charleston) and all rail distances are given in the following table:

To	From New York.	
	All rail distances.	"Rate making mileages" <i>via</i> Charleston — rail and water.
Knoxville .....	785 miles.	768 miles.
Chattanooga .....	847 "	676 "
Rome .....	925 "	597 "
Atlanta .....	876 "	538 "
Meridian .....	1,142 "	901 "
Birmingham .....	990 "	705 "
Anniston .....	949 "	642 "
Selma .....	1,080 "	791 "

From the table below a comparison may be made of the "rate making mileages," rail and water, from New York to Southern points, with the actual all-rail distances from Cincinnati and Chicago to the same:

To	From New York.	From Chicago.	From Cincinnati.
	"Rate making mileages" <i>via</i> Charleston—rail and water.	All rail distances.	All rail distances.
Knoxville .....	763 miles.	560 miles.	290 miles.
Chattanooga .....	676 "	595 "	335 "
Rome .....	597 "	673 "	413 "
Atlanta .....	538 "	733 "	475 "
Meridian .....	901 "	723 "	630 "
Birmingham .....	705 "	652 "	478 "
Anniston .....	643 "	715 "	476 "
Selma .....	791 "	746 "	598 "

It will be seen from the above table that the "rate making mileages" from New York, *which are arrived at by an allowance for the estimated effect of water competition—the estimate being that of the defendants*, are greater than the actual all-rail distances from Chicago, as follows: to Knoxville, by 203 miles; to Chattanooga, by 81 miles; to Meridian, by 178 miles; to Birmingham, by 53 miles; and to Selma, by 45 miles. They are less to Rome by 76 miles, to Anniston by 73 miles, and to Atlanta by 195 miles. They are in every instance much greater than the distances by rail from Cincinnati. The all-rail distances from Cincinnati and Chicago are the following percentages of the "rate making mileages" from New York:

From	To							
	Knoxville	Chattanooga	Rome	Atlanta	Meridian	Birmingham	Anniston	Selma
	pr. c.	pr. c.	pr. c.	pr. c.	pr. c.	pr. c.	pr. c.	pr. c.
Cincinnati .....	88	50	69	88	70	68	74	80
Chicago .....	73	88	112	136	80	92	111	94

On the above basis—that is making the rates from Cincinnati and Chicago the same percentages of the current New York rates as the distances by rail from the former cities are of the “rate making mileages” from the latter—the rates from Cincinnati will be materially less than they now are on the *numbered* classes in all cases and also from Chicago, *except those to Atlanta and on those in classes, 4, 5, and 6 to Birmingham and 4 and 6 to Chattanooga*. They will also be less to a large, but not so great an extent, on the lettered classes. It thus appears that, giving full weight to the claim of defendants that water competition *via* the Atlantic necessitates rates from the east relatively lower than those from the west and as a consequence rates from the west relatively higher than those from the east, it does not with the exceptions above-named account for or justify the existing disparity between them.

The evidence shows that the rates from Eastern Seaboard and Central territories, respectively, were adjusted with reference to each other by mutual agreement between the eastern and western carriers through the medium of the Southern Railway & Steamship Association, and that in making this adjustment *other considerations* than those of water competition, or other dissimilarity of circumstances or condition affecting transportation, had a controlling influence. It appears that lively competition resulting in rate wars had arisen between the eastern and western lines in the transportation into the south by each of traffic from territory claimed by the other. This led to the convention in 1878 (referred to in our statement of facts) of the carriers interested, the object of which was stated to be the establishment of such a co-relation of rates as would “protect to the eastern lines the *business peculiar to their territory*” and to the western lines (then known as the “Green Line Roads”) the business relating to “*their peculiar commodities*”—in other words, to secure to the eastern lines the transportation of “articles manufactured in the east, and in other countries and imported into eastern cities, embraced under the general terms of dry goods, groceries, crockery and hardware” and classified for the most part under the first four of the numbered classes.

and to the western lines, the transportation of "articles of western produce, comprising the produce of animals and the field" and embraced principally in the lettered classes. The only way to accomplish this result through the agency of rate adjustment or manipulation was to place relatively high rates on manufactured articles and relatively low rates on food products shipped from or *via* the West, and *vice versa*, as to such shipments from or *via* the East; and at the opening of the Convention, Mr. Peck, the General Manager of the Association, being called on by the Chairman to state its object, said, among other things, that the western lines conceded that the transportation of manufactured articles, "into the territory embraced by the Southern Railway & Steamship Association should be left to the eastern lines, and *undertake by prohibitory rates to prevent such articles from eastern cities reaching the Association points over their lines.*" A basis of rates, at least ten cents higher by the eastern lines than the western on western products and at least ten cents higher by the western lines than the eastern on "articles peculiar to the east," was then adopted, with a view to effecting the announced object of the Convention. It is manifest that at that time the influence of water competition on the eastern rates was not regarded as a controlling factor in determining what the excess of the western should be over the eastern rates on manufactured goods and the reasonableness in themselves of those western rates was a matter of secondary, if any, consideration. While there have since been fluctuations and changes in the two sets of rates, the principle regulating their co-relation or adjustment with reference to each other has remained practically the same to the present time. The leading idea of securing to each system of carriers the traffic of what is termed its territory, by the adjustment and manipulation of rates and in other ways, is prominent throughout all the Association Agreements. In the last, as in those preceding, it distinctly appears, and the provisions, among others, for a geographical division of territory, for the exaction of local rates to protect association rates, and for penalties, all look to this end. It is, also, apparent on an inspection of the current rates themselves, which disclose the broad distinction

made between the rates on the numbered and lettered classes—the relation between the two sets of rates on the former being advantageous to the east, while that between the rates on the latter are not nearly so favorable to that territory. As a fair illustration, the rates from Chicago to Chattanooga on the lettered classes are from seventy to eighty-nine per cent of the New York rates, while on the numbered classes 1, 2 and 3,—they are respectively 102, 101, and 95 per cent. It is true, rates upon the heavy and cheap articles in the lettered classes should be less than rates upon the comparatively light weighted and valuable articles in the numbered classes, because, as respects the latter, the value of the service to the shipper and the risk to the carrier are greater. These considerations, however, apply equally to shipments of traffic from both territories, and do not, therefore, justify, or account for the distinction to which we have just adverted. The fact that the tonnage of traffic in the lettered classes from Central territory is larger than of traffic in the numbered classes, and doubtless, also larger than the tonnage of traffic in the lettered classes from Eastern territory, is not in our opinion sufficient to authorize or account for the great difference apparent on the face of the tariffs. This difference finds a natural solution in the avowed purposes of the Southern Railway & Steamship Association to secure, by an adjustment of rates calculated to bring about that result, the transportation by the Eastern lines of goods in the numbered classes from the territory set apart as theirs, and to the western lines the transportation of traffic in the lettered classes from the territory apportioned to them.

The relation established between the eastern and western rates in 1878 was, doubtless, suggested by, and found a plausible pretext in, the fact that at that time the west contributed principally in the lettered classes for southern consumption, while goods in the numbered classes came for the most part from the east. The situation in this respect has, however, as appears from our statement of facts, materially changed, and it is estimated that the manufacture in Central territory of goods in the numbered classes has increased 100 per cent in twenty years. If, therefore, the condition as to

manufactures and products in 1878 could have been set up in justification of the adjustment of rates then made, that justification no longer exists and the change in those conditions is an argument in favor of a corresponding change in the rate adjustment. We are of opinion, however, that the situation in 1878 in the respect named constituted no justification. The tendency of such an adjustment of rates was to encourage and build up manufactures in the east and discourage and retard them in the west and thus maintain the *status quo*. In this connection may be noticed the claim of the defendants, that the great growth in Central territory of the manufacture and sale of articles in the numbered classes shows that the rates in question to Southern territory have not been prejudicial to manufacturers and shippers in Central territory. This does not appear to be a legitimate inference in view of the fact that Central territory is not limited to Southern territory as a market, but also sells its manufactures and products as far west as the Pacific coast, as far east as Rochester and Albany, and in the southwest. The proof is that the shipments of goods in the numbered classes from Central to Southern territory (the southeast) are small in comparison with those of goods in the lettered classes and this may be, in part at least, due to the rate adjustment complained of. If the fact, that one section is a large producer and another a small producer of certain classes of traffic, is a factor to be considered in fixing rates from them to a common market, which is not conceded, it would seem that it should operate to give more favorable rates to the latter with a view of stimulating and increasing its production. Considerations of this character, however, if they are to be allowed any weight by carriers in fixing rates from rival territories, should always be held in strict subordination to the invariable rule, that in all cases rates shall be reasonable in themselves. No departure from this rule can be justified on the ground that it is necessary, in order to maintain existing trade relations, or to "protect the interests of competing markets," or to "equalize commercial conditions," or to secure to carriers traffic from certain territory assumed to be exclusively theirs. It is not the duty of carriers, nor is it proper, that they undertake by



adjustment of rates or otherwise to impair or neutralize the natural commercial advantages resulting from location or other favorable condition of one territory in order to put another territory on an equal footing with it in a common market. Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages. *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744; *Raworth v. Northern Pac. R. Co.* 3 Inters. Com. Rep. 857, 5 I. C. C. Rep. 234; *Eau Claire Board of Trade v. Chicago, M. & St. P. R. Co.* 4 Inters. Com. Rep. 65, 5 I. C. C. Rep. 264; *Chamber of Commerce of Minneapolis v. Great Northern R. Co.* 4 Inters. Com. Rep. 230, 5 I. C. C. Rep. 571. If this result in prejudice to one and advantage to another, it is not the *undue* prejudice or advantage forbidden by the statute, but flows naturally from conditions *beyond the legitimate sphere of legal or other regulation*. "Carriers," moreover, "in making rates cannot arrange them from an exclusive regard to their own interests, but must respect the interests of those who may have occasion to employ their services, and subordinate their own interests to the rules of relative equality and justice which the act prescribes." (Second Annual Report.) The provision in the Association Agreements for the "exaction of local rates" to "protect" to each system of carriers the revenue which would come to them, respectively, under a strict enforcement of Association rates and under the division of territory between them, is stated to be for "the purpose" among others, "of securing the *greatest amount of net revenue to all* the companies parties to the agreement." This is, doubtless, the *controlling* consideration. The interests of the public, certainly, cannot be subserved in this way. The division of territory is wholly without warrant in law and is practically a denial to shippers in such territory of the right to ship their goods or produce to market by the line or route they may prefer. The exaction of higher rates on certain articles shipped from Central to Southern territory *than would otherwise prevail*, for the purpose of securing to eastern lines the transportation of that traffic from territory

apportioned to them, is manifestly unlawful, and results in injury to both Central and Southern territory.

The fact, which clearly appears, that rates on the numbered classes from Central territory are made *higher than they otherwise would* be, for the purpose of securing to the eastern lines the transportation of that traffic from the territory set apart to them under the Southern Railway & Steamship Association Agreement, itself raises a *prima facie* presumption of the unreasonableness of those rates. In the Cincinnati Case, the complainant does not directly question the reasonableness of the rates from Cincinnati, but in the Chicago Case it is charged that the rates on through traffic from Chicago to Southern territory are made up of "substantially the local rates in effect from Chicago to Cincinnati and other Ohio river crossings" and "*unreasonably high rates*" from the Ohio on to Southern territory. It appears that the Chicago rates are made up of the two rates as charged—the rates from that city to the Ohio being the regular Trunk Line rates, and from the Ohio southward, the Southern Railway & Steamship Association rates. The shipments being through shipments, under a through bill of lading quoting a total through rate, and without breakage of bulk at the river, this method of making up rates is a departure from the general rule under which through rates established by two or more connecting carriers *are less than the sum of their separate rates*. The Trunk Line rates per ton per mile from Chicago to Cincinnati and the Association rates per ton per mile from Cincinnati to Southern territory are given in the following tables:

*Rates per ton per mile on the numbered classes from Chicago to Cincinnati.*

	1	2	3	4	5	6
	cts.	cts.	cts.	cts.	cts.	cts.
	2 68	2 28	1 68	1 14	1 00	80

*Rates per ton per mile on the numbered classes from Cincinnati.*

To	1	2	3	4	5	6
	cts.	cts.	cts.	cts.	cts.	cts.
Knoxville.....	5 24	4 48	3 98	3 24	2 75	2 06
Chattanooga.....	4 58	3 88	3 40	2 80	2 38	1 79
Rome.....	5 18	4 45	3 92	3 29	2 71	2 22
Atlanta.....	4 50	3 87	3 41	2 86	2 35	1 93
Meridian.....	3 87	3 28	2 82	2 38	1 96	1 71
Birmingham.....	3 72	3 30	2 84	2 30	1 96	1 50
Anniston.....	4 49	3 86	3 40	2 85	2 35	1 93
Selma.....	3 61	3 41	2 74	2 37	1 97	1 57

From these tables it will be seen that the rates per ton per mile from Cincinnati south are in all cases much higher, and in many instances a hundred per cent or more higher, than those from Chicago to Cincinnati.

The averages of the rates per ton per mile on all the classes, lettered as well as numbered, from Cincinnati, are approximately:

From Cincinnati.	<i>Average of rates per ton per mile on all classes.</i>
To	Cents.
Knoxville.....	2 70
Chattanooga.....	2 33
Rome.....	2 62
Atlanta.....	2 31
Meridian.....	2 00
Birmingham.....	1 96
Anniston.....	2 27
Selma.....	1 85

By reference to the tables in our statement of facts giving freight revenue per ton per mile and cost per ton per mile, it will be seen that the above averages are largely in excess of that revenue and cost on the roads taken as whole in, respectively, Southern territory, Central territory, and the country at large.

It appears from tariffs on file with the Commission that, up to April 17, 1893, and for a series of years running as far back at least as 1887, and how much anterior to that time we are not advised, through rates were in existence from New York *via* Cincinnati to Chattanooga, Meridian, and Birmingham, *less* than the sum of the Trunk Line rate to Cincinnati plus the Association rate from Cincinnati on to those cities, and that such rates are still published to Nashville, Memphis, Mobile, and a number of Mississippi river points. The proportions of these through rates left for the hauls from Cincinnati south to Chattanooga, Meridian, and Birmingham, after deducting the Trunk Line rates from New York to Cincinnati, and the extent to which the regular Association rates from Cincinnati exceed those proportions, are shown below :

	1	2	3	4	5	6
Through rates from New York <i>via</i> Cincinnati to Chattanooga, Birmingham, and Meridian....	114	98	86	73	60	49
Trunk Line rates from New York to Cincinnati....	65	57	44	30	26	23
Proportions for hauls from Cincinnati, south....	49	41	42	43	34	27
Association rates from Cincinnati to Chattanooga.....	76	65	57	47	40	30
Deduct proportions of through rate.....	49	41	42	43	34	27
Excess of Association rates.....	27	24	15	4	6	3
Association rates from Cincinnati to Birmingham.....	89	79	68	55	47	36
Deduct proportions of through rates.....	49	41	42	43	34	27
Excess of Association rates.....	40	38	26	12	13	9
Association rates from Cincinnati to Meridian....	122	102	89	75	62	54
Deduct proportions of through rates.....	49	41	42	43	34	27
Excess of Association rates.....	73	61	47	32	28	27

Under these through rates from New York, goods on reaching Cincinnati from New York would take thence on to the south a much lower rate, as shown above, than goods of the

same class from Chicago—the rates from Cincinnati being dependent upon the question whether the shipment originated in New York or Chicago. Although they were withdrawn in April, 1893, it does not seem unfair to presume from the fact that they were so long in existence (and that similar rates are still published to Nashville, Memphis, and other points), that they were not entirely unremunerative to the roads south of the Ohio, and they may be taken as a circumstance, among others, indicating that the rates of those roads on traffic from Central territory would be lower than they are but for their agreement with the eastern lines to maintain the present standard of rates.

The weight of the testimony of railroad officials connected with the roads and lines leading from Central territory to the south, as appears from our findings of facts, tends to show that the idea is prevalent in western railroad circles, that the adjustment of rates from Central and Eastern territories is unjustly prejudicial to the former, and that those roads and lines, south as well as north of the Ohio, are disposed to favor a readjustment of their rates on a basis more favorable to Central territory, but that they have not done so on account of their alliance with the Eastern lines as members of the Southern Railway & Steamship Association—the latter lines not being willing to agree to such readjustment.

Our conclusion upon the whole is that, as charged in the complaint in the Chicago case, the rates on the numbered classes from Cincinnati and the Ohio river crossings to the south are “unreasonably high,” and as they enter into the through rates from Chicago, that those through rates, as well as the rates from Cincinnati, are excessive. There is no complaint that the rates from Chicago to Cincinnati and the other crossings are unreasonable in themselves and no evidence authorizing us to so find. They are the regular Trunk Line rates and are *not* subject to the objection, as in the case of the Association rates south of the river, that they are made higher than they otherwise would be for the purpose of securing to the Eastern Seaboard lines traffic from territory set apart to them. The cost on freight in general per ton per mile on the roads south of the river appears to have been for

the years named in the tables heretofore given about 25 per cent on an average greater than the cost per ton per mile on the roads from Chicago to the river. The tonnage of the latter roads is also greater than that of the former as shown in the tables. Rates from Cincinnati to Southern territory from 35 to 50 per cent higher per ton per mile than those from Chicago to Cincinnati and other Ohio river crossings will, in our opinion, make full allowance for these differences in cost and tonnage, and be at least not unreasonably low as maximum rates. The rates in cents per 100 lbs. given below are approximately upon this basis.

<i>From Cincinnati.</i>						
To	1	2	3	4	5	6
Knoxville. ....	58	45	37	27	23	20
Chattanooga. ....	60	54	40	30	24	22
Rome. ....	75	64	54	44	34	24
Atlanta. ....	86	73	60	45	35	27
Meridian. ....	114	98	80	62	49	38
Birmingham. ....	87	74	60	46	36	28
Anniston. ....	86	73	60	45	35	27
Selma. ....	108	92	78	60	48	36

Rates from Chicago to Knoxville, Chattanooga, Rome, Atlanta, and Anniston are made *via* Cincinnati; those from Chicago to Birmingham and Selma, *via* Louisville; and those from Chicago to Meridian, *via* Cairo, on the Illinois Central. The rates in the following table, accordingly, to the five cities first named are combinations of the above rates to those cities with the existing rates from Chicago to Cincinnati; to the two cities next named, they are combinations of rates from Louisville constructed on the same basis as the rates in the above table with the existing rates from Chicago to the river; and to Meridian, they are combinations of rates from Cairo constructed on the same basis as the rates in the above table with the existing rates from Chicago to Cairo.

<i>From Chicago.</i>						
To	1	2	3	4	5	6
Knoxville.....	98	79	62	44	37	32
Chattanooga.....	100	88	65	47	39	34
Rome.....	114	97	79	61	49	38
Atlanta.....	126	107	85	62	50	39
Meridian.....	114	98	82	60	47	38
Birmingham.....	111	95	72	52	44	34
Anniston.....	126	107	85	62	50	39
Selma.....	128	112	89	66	53	38

(*Note.*—The rates from Chicago and Cincinnati to Meridian are made substantially the same, because the larger portion of the haul from Chicago is in Central territory where rates are lower).

An order will be issued directing the defendants engaged in transporting traffic from Chicago and Cincinnati to Southern territory to desist from charging higher rates on the traffic embraced in the numbered classes from those cities, respectively, than those in the two preceding tables and to make all the necessary readjustments of their tariffs. These rates are a conservative reduction of the existing rates, and, while it is believed they will go far to do away with the "undue prejudice" to which Central territory is now subjected, they are, probably, not so low as they might be made if fuller and more accurate data were accessible. If the rates by the Eastern Seaboard lines be taken as the standard of comparison, the rates in these tables will be found to make in the main due allowance for the estimated effect on those rates of water competition *via* the Atlantic. They are also higher than the proportions of the through rates from New York *via* Cincinnati to Chattanooga, Birmingham, and Meridian, allowed for the hauls from Cincinnati to those points, and which were in effect for a long period of years; and they yield a rate per ton per mile largely in excess of the reported cost per ton per mile of freight on the roads from the Ohio south (and in other sections of the country) and much above the average of their receipts per ton per mile. (See tables in statement of facts). They are, it seems scarcely necessary to add, prescribed as maximum rates and are not intended to be prohibitory of such

lower rates as the carriers interested may find to be just and reasonable.

We are not unmindful that a compliance with the order in these cases may and probably will necessitate a readjustment of rates from Central territory to other points in Southern territory than those named, but as we took occasion to say in the case of the *Board of Trade of Troy v. Alabama M. R. Co.*, 4 Inters. Com. Rep. 348, 6 I. C. C. Rep. 1, "it cannot be held to be a valid objection to the correction of unlawful rates to one locality, that it involves a like correction to other localities."

Even pecuniary embarrassment of a road by reason of insufficient receipts from all sources is not a fact that will warrant making rates on a portion of its traffic unreasonably high for the accomplishment of a purpose such as is disclosed in these cases. Excessive rates on certain classes of traffic may be made the basis of proportionately low rates on other classes, and thus shippers of the former are taxed with burdens which in justice should be borne by the latter and without any addition to the general aggregate revenue of the carrier. It is believed, moreover, that the reduction in rates ordered in these cases will result in a corresponding increase in the tonnage of the roads in the traffic affected, and that the revenue therefrom will be augmented rather than lessened. This, at any rate, will be the natural tendency of the change.

The further claim is made in the Chicago case, that, in the language of complainant's brief, "As Boston is given the same rates to Southern points as New York, by the tariffs *fixed by defendants through the agency of the Southern Railway & Steamship Association*, Chicago should have the same rates to Southern points as may prevail between Cincinnati and Southern points, the distance between New York and Boston being 213 miles and the distance between Chicago and Cincinnati being not substantially greater." No sufficient reason appears for sustaining this proposition. In the first place the short line distance from Chicago to Cincinnati is 298 miles, which is 85 miles or about 40 per cent greater than the distance from New York to Boston—a material difference in our opinion; and, in the second place, the transportation between Chicago and Cincinnati is all rail, while between Boston and



New York there is water transportation *via* the Atlantic at small cost as compared with that by rail.

As will be seen from our statement of facts, unmistakable provisions for pooling are found in the Association Agreements from 1885 up to and including that which terminated July 1, 1887. In those agreements in addition to the sum required to be paid monthly into the pool, each member is assessed \$300 for the payment of salaries of officers and other "general expenses" of the Association. Subsequent agreements omit these provisions, but in lieu thereof require the payment by each member of an amount equivalent to \$5, for each mile of road operated, not to exceed \$5,000 for any one company. The sum thus to be raised, it will be observed, is many times larger than the \$300 assessment in prior agreements for payment of expenses. It is to be applied in the first place to the payment of "any *fin*es that may be assessed by the Board of Arbitration against any members of the Association for violating its rules" and the *surplus* is to be applied to the expenses of the Association. As to what is meant by term "fines," the language of the agreement of 1892 and that now in force in reference to this surplus is significant, namely, "any surplus over and above the amount that may be awarded by the Board of Arbitration *to indemnify any member for losses sustained* shall be applied to the payment of the expenses of the Association." In the agreement of 1892 it is declared that the fines or penalties imposed for violations of the agreement shall be such as the Board of Arbitration "may deem proper and necessary to secure the *maintenance of the rates* of the Association," but in the present agreement, they are to be such as the Board "may deem proper and *commensurate with the injuries inflicted* upon the Association and *of competing lines* parties to this Agreement." The "losses sustained" by, and the "injuries inflicted" on, any member of the Association by a violation of the agreement by another member, would be the traffic or revenue therefrom, lost by reason of such violation. For example, if a western road or line should haul traffic assigned to an eastern road or line under the territorial clauses of the agreements, the loss sustained by or injury inflicted on the

eastern road or line would be the revenue which would have been earned by the latter on such traffic under Association rates. This, it seems, would be the amount which the "injured" road or line would be entitled to receive credit for under a pooling arrangement. As the fines and penalties provided for are, in the words of the agreement of 1892, intended "to *indemnify* any member for losses sustained" by reason of any violation of the agreement and, by the subsequent agreement, are to be "*commensurate* with injuries" thus inflicted, it appears clear that they are available as substitutes for balances or amounts which would be due under a regular pooling arrangement and the system under which they are imposed is—if not expressly, at least in legal effect—a combination, contract, or agreement, for (in the language of the Act) "the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or *any portion thereof*." The money paid to the "injured" road would be that "portion" of the "offending" road's earnings, which it had received by reason of its violation of the Association rules and which the "injured" road presumably would have earned and received but for such violation. Ample provision, furthermore, is made in these agreements for the detection of any violation of their rules by requiring the rendition to the Commissioner by all the members of the Association of *tonnage* and *revenue* reports and the furnishing to him "copies of all manifests for traffic covered by the Agreements (such copies to be forwarded at the time the shipments to which they appertain are made and to show the original shipping point and through rates and divisions thereof)" and also monthly "abstracts of all such manifests." These monthly abstracts, if not for the purpose, at any rate enable the Association to impose at the end of each month the so-called "penalties" for violations of its rules, just as under prior agreements with avowed pooling arrangements monthly balances were struck and clearing-house settlements had. The law has regard to the substance, rather than the form or name of things, and whatever it prohibits from being done directly cannot legally be effected indirectly.

We also deem it our duty to call attention to § 2 of Article 23 of the Agreement of July 31, 1893 (now in force), which is as follows:

“It is distinctly understood and agreed that the maintenance of rates as established under the rules of the Association is of the very essence of this Agreement, and the parties hereto pledge themselves to maintain them and to *require all their connections to maintain such rates*, and in the event of any company or line or its connections not members of the Association failing to conform to this obligation, the other parties in interest pledge themselves to increase their proportions of through rates sufficiently to protect the authorized rates, and *to apply full local rates upon all traffic subject to the Association Agreement coming from or going to such offending lines*, when required by the Commissioner to do so.”

Whatever obligation there may be on the part of members to maintain Association rates is the result of their *voluntary* action in entering into the Association Agreement. One carrier has no authority to dictate the rates which another shall charge for the service of transportation over its own road or line; and, whether or not members of the Association are justified in “increasing their proportions of through rates sufficiently to protect the authorized rates” of the Association, it seems clear that they cannot lawfully resort to discrimination against their connections, not members of the Association, as a punishment for failure on their part to conform to those rates or for the purpose of compelling such conformity. Among other things prohibited in § 3 of the Act to regulate commerce is discrimination by carriers subject to the Act “in their rates and charges between connecting lines.” Applying “full local rates upon all traffic subject to the Association Agreement coming from or going to” connecting lines which do not maintain Association rates, while to traffic from other connecting lines conforming to such rates full local rates are not applied, would be, in our opinion, an unlawful discrimination against the former under the above clause of § 3 of the Act. The mere combination or agreement to thus discriminate is not, however, made an offense under the Act and no actual discrimination of this kind has been shown

in these cases. As to whether such combination or agreement alone, in the absence of an overt act, would be indictable at common law or under some other statute, it is unnecessary and, perhaps, improper for this Commission to express an opinion. We can only say, that the agreement in this particular is an agreement to do an act forbidden by the Interstate Commerce Law, and, if in any instance it should be put in practice, the carriers involved would be liable to be proceeded against, under that law.

H. W. BEHLMER v. THE MEMPHIS & CHARLESTON RAILROAD COMPANY; THE EAST TENNESSEE, VIRGINIA, & GEORGIA RAILWAY COMPANY; THE GEORGIA RAILROAD & BANKING COMPANY; THE SOUTH CAROLINA RAILWAY COMPANY; HENRY FINK AND CHARLES M. MCGHEE, AS RECEIVERS OF THE EAST TENNESSEE, VIRGINIA, & GEORGIA RAILWAY COMPANY AND THE MEMPHIS & CHARLESTON RAILROAD COMPANY; DANIEL H. CHAMBERLIN, AS RECEIVER OF THE SOUTH CAROLINA RAILWAY COMPANY; THE CENTRAL RAILROAD & BANKING CO. OF GEORGIA AND THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, AS LESSEES OF THE GEORGIA RAILROAD; AND H. M. COMER, AS RECEIVER OF THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA.

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Decided June 27, 1894.

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1. The competition of markets or the competition of carrying lines subject to regulation under the Act to regulate commerce does not justify carriers in making greater short haul or lower long haul charges over the same line in the same direction (the shorter being included within the longer distance) in the absence of an order of relief issued by the Commission upon application therefor and after investigation.
2. When a carrier on complaint under the 4th section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for a shorter haul, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the 4th section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor.
3. The construction of the 4th section of the Act to regulate commerce as laid down in *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744, and *Ga. R. R. Com. v. Clyde SS. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 824, followed in

*Chattanooga Board of Trade v. East Tennessee, V. & G. R. Co.* 4 Inters. Com. Rep. 213, 5 I. C. C. Rep. 546, explained in *Gerke Bros. Co. v. Louisville & N. R. Co.* 4 Inters. Com. Rep. 267, 5 I. C. C. Rep. 596, and sustained in *Interstate Commerce Com. v. Cincinnati, N. O. & T. P. R. Co.* (not yet reported), reaffirmed.

4. Defendants ordered to cease and desist from making higher aggregate charges on hay and other commodities carried under similar circumstances and conditions, over their connected roads from Memphis, Tenn., to Summerville, S. C., than they charge for carrying said commodities for the longer distance from Memphis over said connecting line through Summerville to Charleston, S. C., without prejudice to defendant's right to apply to the Commission for relief under the proviso clause of the 4th section.

*Claudian B. Northrop*, for Complainant.

*W. A. Henderson*, for E. T. V. & Ga. Ry. Co. and M. & C. R. R. Co. and Receivers.

*Brawley & Barnwell*, for S. C. Ry. Co. and Receiver.

*Ed. Baxter and Jos. B. Cumming*, for L. & N. R. R. Co. and C. R. R. & Bkg. Co. of Ga. as Lessees of G. R. R.

#### REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

The complainant alleges on behalf of himself and other merchants and residents of Summerville, S. C., that the defendants charge an unreasonable and excessive rate of 28 cents per 100 lbs. on hay in carload lots from Memphis to Summerville; that said rate of 28 cents is 9 cents per 100 lbs. greater than the defendants charge and receive for transporting hay in carloads from Memphis through Summerville to Charleston, S. C., and that such greater charge constitutes a violation of the long and short haul clause of the statute; that said rate of 28 cents to Summerville is equal to the rate of 19 cents in force on hay in carloads from Memphis through Summerville to Charleston plus the local rate of 9 cents per 100 lbs. charged over the South Carolina Railway for carrying hay from Charleston back to Summerville, and that said 9-cent local rate which complainant is forced to pay in addition to the through Charleston rate in order to get hay

transported by defendants from Memphis to Summerville is also unreasonable and excessive. The shipment of two carloads of hay from Memphis to Summerville in August, 1892, upon which complainant was compelled to pay the 28-cent rate is specified in the complaint. The complainant also alleges generally that the defendants engaged in transportation from Memphis to Charleston are subject to the Act to regulate commerce; that all of the roads involved in this proceeding are members of the Southern Railway & Steamship Association, and that the discrimination and excessive rates against Summerville exist not only on hay but on all articles of interstate commerce coming to that place to the detriment and disadvantage of the town and the business of its merchants. The complaint prays that defendants be ordered to cease and desist from further violating the law as therein alleged and from all similar violations, and for such other and further order as the Commission may deem necessary in the premises.

The joint answer of the receivers of the East Tennessee, Virginia, & Georgia Railway Company and the Memphis & Charleston Railroad Company admits that they are subject to the Act to regulate commerce and that the shipment of hay took place as specified in the complaint, but they do not admit that the rates set forth in the complaint constitute any violation of the law and demand proof of the same.

The joint answer of the lessees of the Georgia Railroad and the answer of the receiver of the South Carolina Railway Company are substantially the same. These answers while admitting the rates to be as stated in the complaint and that the shipment specified in the complaint was made over the defendant roads, deny that said rates are in violation of the Act to regulate commerce. In relation to complainant's allegation of violation of the fourth section these answers contain the following specific averments:

"1. The Georgia Railroad Company and the other carriers complained against have no joint through tariff from Memphis to Summerville and, therefore, they have no 'line' in the sense of said section from Memphis to Summerville, on which said section can operate."

"2. The transportation of two carloads of hay from Memphis to Summerville is not done under substantially similar circumstances and conditions as the transportation of like property from Memphis to Charleston;"

"For (first) Summerville is a local station on the South Carolina Railway. It is not on any water route, and enterprise and capital have not constructed more than one railroad to it. It has not, therefore, the advantage of competition of carriers. The one railroad on which it is located, *viz.*, The South Carolina Railway Company, is not compelled by competition to choose between a reasonable rate and a rate which is much below what would be reasonable. On the other hand, at Charleston there exists competition with numerous all rail routes between Memphis and Charleston. Respondents here mention eight of these all rail routes between Memphis and Charleston, to wit:

"Memphis & Charleston Railroad; East Tennessee, Virginia, & Georgia Railroad; Savannah, Florida, & Western Railway, and Charleston & Savannah Railway:

"Memphis & Charleston; Western & Atlantic; Central Railroad & Banking Company of Georgia; Port Royal & Augusta, and Charleston & Savannah:

"Memphis & Charleston; Western & Atlantic; East Tennessee, Virginia, & Georgia or Central Railroad & Banking Company of Georgia; Seaboard Air Line; Clinton, Newberry, & Laurens, and the Atlantic Coast Line:

"Kansas City, Memphis, & Birmingham; Central Railroad & Banking Company of Georgia; Port Royal & Augusta, and Charleston & Savannah:

"Kansas City, Memphis, & Birmingham; Georgia Pacific; Richmond & Danville, and Atlantic Coast Line:

"Kansas City, Memphis, & Birmingham; Louisville & Nashville; Alabama Midland; Savannah, Florida, & Western, and Charleston & Savannah:

"Louisville & Nashville; Nashville, Chattanooga, & St. Louis; Western & Atlantic; Georgia Railroad, and South Carolina Railway:

"Louisville & Nashville; Nashville, Chattanooga, & St. Louis; Western & Atlantic Seaboard Air Line, and Atlantic Coast



Line—or Port Royal & Western Carolina; Port Royal & Augusta, and Charleston & Savannah Railroads.”

“Besides these eight enumerated all rail routes there are others which could be designated. These lines are not only potential, but are actual competitors with these respondents and their codefendants for business from Memphis to Charleston.”

“(Second) Charleston is a port on the Atlantic coast, accessible and easily reached from the ports of Baltimore, Philadelphia, New York, Boston, and other eastern ports, from which hay is shipped by water. If the rail lines from Memphis to Charleston charged rates to Charleston as high as the rate to Summerville, although the latter rate is in itself reasonable, no hay would be brought from Memphis to Charleston, but Charleston would be supplied with hay from North Atlantic ports—and the railroads would lose the hay business and Memphis would lose a hay market.”

“(Third) The rates on Western produce to Charleston and other coast cities, such as Savannah, Port Royal, and Brunswick, are made with a view to actual existing water competition. Western produce, such as grain, hay, etc., distributed from Chicago, can reach Charleston through the ports of New York, Philadelphia, or Baltimore, over continuous water routes *via* the lakes and canal, or over combined rail and water routes.”

“The all rail lines, seeking to do business between Chicago and Charleston and other coast cities, are compelled to make their rates approximate those which are offered by the continuous water route, or by the combined rail and water routes. The all rail routes make their rates as much higher as the difference in service will permit, and those rates are correspondingly adjusted from all western points, such as Evansville, Cairo, St. Louis, Memphis, etc. At present the all rail rate from Chicago to Charleston on hay, for instance, is 33c. per 100 lbs.; from St. Louis, 28c.; from Louisville, Evansville, and Cairo, 23c. and from Memphis, 19c.—the route through Memphis offering facilities for the transportation of hay, grain, and western products generally, from the states of Missouri, Kansas, Nebraska, etc.”

"The rate from Memphis to Charleston on hay is, therefore, forced upon the defendant lines by actual, existing water competition, and by other competition beyond the control of defendant."

"The controlling element in said competition is the lake, canal, and ocean transportation between Chicago and Charleston; or the lake transportation from Chicago to Buffalo, or other lake port, thence by rail to New York, thence by ocean to Charleston; or rail transportation from Chicago to Baltimore, Philadelphia, or New York, thence by ocean to Charleston."

"(Fourth) As above stated, the Georgia Railroad Company and other carriers complained against have no joint through tariffs from Memphis to Summerville. They do have joint through tariffs from Memphis to Charleston, and the joint through rate from Memphis to Charleston on hay is 19c. per 100 lbs."

If it shall appear in this case that the defendants violate the long and short haul clause of the law by keeping the higher rate to Summerville in force, it will be unnecessary to consider in this report whether the rate to Summerville is in violation of other provisions of the law. In that event the prohibition in the 4th section will afford all the reduction demanded in the complaint.

#### FACTS AND CONCLUSIONS.

Transportation from Memphis to Charleston *via* the connecting and continuous line formed by the defendants' railroads passes through Summerville, a point on the South Carolina road 21 miles west of Charleston, which road is also the delivering carrier for traffic over this line to Charleston. Their rate in force for the carriage of hay in full carloads from Memphis to Summerville is 28 cents per hundred pounds, and this rate is equal to a combination of the 19-cent rate to Charleston plus a 9-cent local of the South Carolina road back to Summerville. Shipments from Memphis to either Charleston or Summerville are carried through over this line of connecting roads under through bills of lading.

The defendants make a joint tariff rate on hay to Charleston from Memphis, and unless they show substantial dissimilarity in circumstances and conditions under which the transportation to Charleston and Summerville is conducted, they are prohibited by the 4th section of the law from making any greater charge for the shorter distance to Summerville than that which they have in force for carrying over the same line in the same direction for the longer distance to Charleston.

The defendants claim that substantial dissimilarity in such circumstances and conditions is created by :

1. The competition of various markets for the trade of Charleston, such as New York, Boston, Philadelphia, Baltimore, Chicago, and other points which can reach Charleston by all water lines or by all rail or part rail and part water routes.
2. The competition of rail lines between Memphis and Charleston.

The construction of the 4th section of the Act as laid down in the case of *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744, and in *Ga. R. R. Co. v. Clyde SS. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324,—followed and explained in *Gerke Brew. Co. v. Louisville & N. R. Co.* 4 Inters. Com. Rep. 267, 5 I. C. C. Rep. 596—and also reaffirmed by the Commission in *Chattanooga Board of Trade v. East Tennessee, V. & G. R. Co.* 4 Inters. Com. Rep. 213, 5 I. C. C. Rep. 546, has been passed upon by the Federal courts in the proceeding brought by this Commission against the Cincinnati, New Orleans, & Texas Pacific Railway Company and others to enforce its order in the first above-mentioned case (*James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.*). The decision of the United States Circuit Court for the Northern District of Georgia reviewed the construction of the 4th section by the Commission, and declared that construction to be altogether unsound. *Interstate Commerce Com. v. Cincinnati, N. O. & T. P. R. Co.* 4 Inters. Com. Rep. 332, 56 Fed. Rep. 925. But the Commission took an appeal to the Circuit Court of Appeals for the Fifth Judicial Circuit, and that court has recently rendered a decision annulling and reversing the decision of the circuit court, and remanding the case with

instruction to enforce the long and short haul order of the Commission in that case. *Interstate Commerce Com. v. Cincinnati, N. O. & T. P. R. Co.* Circuit Court of Appeals. (Not yet reported.)

This decision of the Circuit Court of Appeals amounts to an affirmance of the Commission's Construction of the meaning of the 4th section as laid down in the cases above mentioned, and under that construction the complaint in this case must be sustained. There is no showing in this proceeding of competition by lines not subject to the Act to regulate commerce for the carriage of hay from Memphis to Charleston, and the fact that there may be competition for such traffic by lines which are subject to the Act, or that hay may be carried to Charleston by various rail and water or part rail and part water routes from points other than Memphis, does not justify the defendant carriers in departing from the general rule of the 4th section upon their own motion. Such considerations may constitute reasons for applying to the Commission for relief under the proviso clause of that section, but for reasons stated in our decisions of the cases above cited they do not justify carriers in departing from the rule of the 4th section without such a relieving order. Water competition, to justify lower long haul rates, must exist between the point of shipment and the longer distance point of destination. *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co. supra.* One transportation line cannot be said to meet the competition of another transportation line for the carrying trade of any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it. *Chattanooga Board of Trade v. East Tennessee, V. & G. R. Co. supra.* The competition of markets or the competition of carrying lines subject to regulation under the Act to regulate commerce does not justify carriers in making greater short haul or lower long haul charges over the same line without an order issued by the Commission on application therefor and after investigation. *Ga. R. R. Com. v. Clyde SS. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324, and *Gerke Brew. Co. v. Louisville & N. R. Co.* 4 Inters. Com. Rep. 267, 5 I. C. C. Rep. 596.

The following rule of practice was laid down by us in the Georgia Railroad Commission cases: "When a carrier on complaint under the 4th section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the 4th section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor."

Because Charleston is an important seaport and railroad centre, and hay may be and is carried there from various points, is not sufficient reason for a departure from this rule. The just interests of the carriers are fully protected by the proviso clause of the 4th section. The defendants are under no obligation to compete at low rates for the carriage of hay from Memphis to Charleston. They ought not to engage in such competition if the rates obtainable are not remunerative. If they are remunerative the defendants cannot, in the face of the prohibition of the 4th section, and the provision in that section for the issuance of relieving orders, assume to say that such rates, though profitable on Charleston traffic, are insufficient for the transportation of carload quantities to a shorter distance point on the same line and in the same direction. That is a question which Congress, by enacting the proviso or saving clause in the 4th section, made it the duty of this Commission to determine. The very reason why the proviso was added to the section was to enable carriers to obtain relief from hardship in special cases if, upon application for relief, they make it appear that hardship actually exists.

Neither of the defendants having applied for relief under the proviso to the 4th section, order will be entered directing them to cease and desist, on or before July 15, 1894, from charging or collecting any greater sum in the aggregate for the transportation from Memphis to Summerville of hay, or other commodities carried by them under circumstances and conditions similar to those appearing in this case, than they

do for such transportation for the longer distance to Charleston, but without prejudice to the right of said defendants to apply for relief under the 4th section of the Act to regulate commerce. The filing of an application for relief by the defendants or either of them before the time above specified will, if it refers to transportation over this line to Charleston, operate as a stay upon this order during the pendency of proceedings on such application.

**IN THE MATTER OF THE FORM AND CONTENTS OF  
RATE SCHEDULES, AND THE AUTHORITY FOR  
MAKING AND FILING JOINT TARIFFS.**

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Decided September 8, 1894.

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**REPORT AND OPINION OF THE COMMISSION.**

*By the Commission:*

The various difficulties connected with the form and contents of tariff schedules, the importance of uniformity in their arrangement and simplicity in their statements, and the duty of bringing them into conformity with the requirements of the statute, have been matters of concern to the Commission from the time of its organization. In the first annual report to Congress the conditions existing before the Act to regulate commerce was enacted are described in the following language:

"Then their rates were changed at pleasure and without public notification; their dealings to a large extent were kept from the public eye, the obligation of publicity not being recognized; and the public were therefore without the means of judging whether their charges for railroad service were reasonable and just or the contrary."

"But the publications actually made only increased the difficulties. Railroad rates difficult enough to be understood by the uninitiated when printed plainly in one general tariff with classification annexed, became mysterious enigmas when several different tariffs were printed, as was the case in some sections; some relating to competitive points and others to what were called local points, and each referring to voluminous and perhaps different classifications, which were printed but not posted, and which were observed or disregarded at will in the rates as published. Such unsystematic and misleading publications naturally led to many overcharges and controversies, and naturally invited and favored special rates and injurious preferences."

Subsequently, in the same report, referring to the tariffs which had been filed by the carriers under the 6th section of the Act, the Commission said :

"But though the carriers make and file their tariffs as required by the Act, there is no general uniformity to the tariffs or to the classifications, either in form or general method of preparation. This is unfortunate for several reasons, but especially because the public, who have to deal with many carriers, are likely to be confused between the different methods of giving information, and possibly to be misled in some cases. The difficulty of making use of them for the purposes of the Commission is also greatly enhanced by the want of uniformity, and the Commission would be very glad to correct it if that were possible."

And in concluding this report the Commission made several recommendations, among which was the following :

"The Commission ought also to have the authority and the means to bring about something like uniformity in the method of publishing rates, which is now in great confusion, and to carefully examine, collect, and supervise the schedules, contracts, etc., required by the law to be filed."

When the second annual report was submitted, measures were pending before Congress for enlarging the powers and duties of the Commission in regard to railway tariffs, and the following comment was deemed a sufficient reference to the subject :

"Much still remains to be done in order to assure a complete and adequate supervision of the transportation schedules furnished by the carriers. No uniformity in form has yet been reached, nor has any general system been adopted under which they are prepared. Amendments to the Act, now pending in Congress, are designed to enable the Commission to enforce the adoption of better and more systematic methods which are greatly needed."

By an amendment approved March 2, 1889, the 6th section of the Act was changed in several important respects and the following provision inserted :

"The Commission may determine and prescribe the form in which the schedules required by this section to be kept open



to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient."

The authority conferred by this enactment has not heretofore been exercised through definite and formal orders, because the Commission has believed it more expedient to promote the correction of rate sheets by calling the attention of individual carriers to particular defects, and by general suggestions to railway officials which have been so far adopted as to accomplish much improvement in the construction of tariff schedules. The obligations imposed by the statute, and knowledge of the power possessed by the Commission, were reasonably expected to secure substantial observance of the law in this regard, without resort to specific and mandatory directions. It was thought preferable to bring about reforms in the arrangement and contents of public tariffs through the voluntary action of railroad managers, rather than by issuing explicit and compulsory orders.

In pursuance of this policy, and to obviate the necessity of a voluminous correspondence concerning matters of detail, the Commission instructed its Auditor to prepare a statement of its views regarding the general features of tariff construction which would effect compliance with the amended statute. This statement was published in pamphlet form in December, 1891, and widely distributed to railroad officials having charge of the preparation of rate sheets, and to other persons presumably interested in such an announcement. It set forth at considerable length the various questions involved, and stated quite fully the information which should be given to the public in the published schedule of carriers subject to the Act. If the directions contained in this publication had been followed, no further action by the Commission in respect to this provision of the law would seem to be required. While, however, a general willingness has been displayed by railway managers to comply in minor details with the suggestions then made, the Commission has been somewhat disappointed in its expectations concerning matters of primary importance, and has long been impressed with the imperfections and omissions of many of the rate sheets which are in current use. Such defects are especially observed in

the arrangement and recitals of joint tariffs under which the greater portion of interstate traffic is carried on. In numerous instances these tariffs fail to give the name of participating carriers—the parties to the agreement—omit any statement as to routes employed in effecting the transportation, and are otherwise wanting in information believed to be of consequence to the public and required by the statute to be disclosed.

There has been some failure, we apprehend, to recognize the full purpose of these provisions which relate to the construction and publicity of tariff schedules. Many railroad officials apparently suppose that the sole object in view is to acquaint shippers and passengers with the scale of charges which carriers may lawfully impose for the services they are called upon to perform. This conception is clearly inadequate, for it takes no account of the relation of such requirements to the general scheme of public regulation. Beyond the information to which the individual patron of the railroads was deemed entitled, Congress intended that the agency intrusted with the duty of administering the law should be supplied with the means of becoming familiar with the entire body of rates throughout the country, to the end that complaints of injustice and exaction might be more intelligently considered, and relative reasonableness in transportation charges more effectually secured. This purpose was pointed out by the Commission in its report of an investigation concluded in March, 1889, wherein, among other comments, the following observations were made:

“It is proper to add, however, that the requirement of publication found in the law is based upon many other considerations besides that of affording information to local shippers. The necessity of establishing and maintaining a steady, uniform, open tariff rate is of paramount importance, in view of the evils which the Act to regulate commerce attempts to correct, and obviously the first and most efficient method of regulation is the requirement of constant publicity.”

*Re Atlanta & W. P. R. Co.* 2 Inters. Com. Rep. 480, 3 I. C. C. Rep. 75.

This opinion was expressed, it should be remembered, concerning the 6th section of the act as it existed before the amendments of March 2, 1889, were adopted, and without reference to the added authority at that time conferred upon the Commission to "determine and prescribe the form in which the schedules" of rates and charges "shall be prepared and arranged." The enlarged obligations created by these amendments were plainly designed to aid the enforcement of the law in other respects, as well as to furnish individual shippers with more accurate knowledge respecting the rates and regulations of public carriers.

The reciprocal duties arising under this section must be regarded as fundamental to the purpose of the whole enactment. Any system of laws adapted to the regulation of interstate commerce will include the requirement of a common standard of compensation, and provide alike for its easy comprehension and its suitable publicity. The charges for railway transportation should be uniform to all and readily understood by all. The publication of tariffs in convenient form, adequate in statement and properly authenticated, is essential to the enforcement of reasonable rates and impartial treatment. So far as possible the schedules should be simple in arrangement, ample in their disclosures, and free from ambiguity. Otherwise the opportunity is afforded for evading the law by discriminating practices and unjust exactions. This is peculiarly true of joint tariffs issued by two or more carriers whose connected roads are operated as a single and continuous line. The increased and often enormous mileage which is thus brought under a common control, the great volume of traffic which thereby receives speedy and uninterrupted movement, and the temptations to favoritism arising from competition between rival systems, render it specially necessary that the public schedules under which business of this character is conducted should answer all the requirements of the statute. That many of the joint tariffs now employed are not in accord with these provisions is practically admitted by railway managers. They are often faulty in form, imperfect or ambiguous in disclosures, and generally lacking in proper evidence of their authenticity. When such a tariff is filed by

one of the associated lines only, as is usually the case, if the participating carriers are not designated and no proof of their concurrence is furnished, it is quite possible for the latter to avoid liability, when charged with criminal misconduct in respect of a joint rate so issued, by denying knowledge of its existence or consent to its publication, although the fact that they carried traffic apparently under that tariff may be clearly established. If a connecting carrier, which joins in the transportation of freight received from the initial carrier, is prosecuted for violating the joint rate published by that initial carrier alone, there can be no conviction without proof, often impossible to obtain, that such connecting carrier agreed to the joint rate in question or authorized its promulgation. On the other hand, if it is assumed that the connecting carrier is not a party to the joint rate so issued, for want of assent thereto or concurrence therein, and the charge of unlawful conduct is based upon the acceptance of less than its own local tariff, such connecting carrier may refute the accusation by asserting that it had consented to the joint schedule issued by an initial carrier and was in fact a party thereto. Thus the ground of defense can be shifted to meet the theory of the prosecution, and a given carrier actually guilty of wrongdoing may secure immunity from punishment, through inability to determine, before its disclosure is forced, whether it is or is not bound by the joint tariff which another carrier has published and filed. When such avenues of escape and evasion are afforded by the rate sheets in common use, there must be something at serious fault in their contents and construction. Defects in tariff schedules provide opportunity for inhibited practices which might not otherwise be available, and tend to defeat in greater or less degree the beneficial purposes of publicity. More than this, they indicate a measure of disrespect for the law and a disposition to avoid its wholesome restraints. They render its enforcement in many cases impracticable, weaken the authority of its various restrictions, and not infrequently prove an aid to prohibited and inequitable dealings between shipper and carrier.

Without enlarging upon these considerations or specifying in greater detail the reasons for dissatisfaction with existing

methods, it is sufficient to say that the Commission has believed for some time that the authority conferred by the amendment of 1889 should be more directly and formally exerted, with the view of securing rate sheets and joint schedules which shall meet the requirements of the statute. Desiring to proceed with all needful caution, and not unmindful of the difficulties involved in any adequate scheme of tariff construction, it was deemed suitable to acquaint the principal railroad managers with the purpose of the Commission and to invoke the aid of their practical experience. To this end the following circular letter was issued at the date therein named :

“INTERSTATE COMMERCE COMMISSION,

Washington, January 20, 1894.

Dear Sir:

The Commission having determined to prescribe the form of schedules of rates and charges required by the Act to regulate commerce to be kept open to public inspection, in accordance with authority conferred by the sixth section thereof, and desiring that while fully meeting the requirements of the law the form adopted shall not be unnecessarily burdensome to the railways by reason of the expense or otherwise, it is thought proper to invite the carriers subject to the Act to send representatives to a conference to be held at the office of the Commission in Washington, on Monday, February 12, 1894, when opportunity will be afforded to offer suggestions regarding the preparation of such a form (especially suggestions as to a form for joint tariffs) as will comply with the requirements of the statute. In the meantime the Commission will be glad to receive suggestions by letter from those interested.

Yours truly,

WM. R. MORRISON, Chairman.”

In response to this invitation a large number of traffic officials assembled at the office of the Commission on the 12th of February, 1894, and the subject was discussed at considerable length during that and the succeeding day. An understanding was then reached that a subsequent conference should be held, at which the representatives of the railroads, who were to consult with each other in the meantime, would submit to the Commission some feasible plan for accomplishing

the main ends desired. This second conference was held pursuant to the following call issued March 2, 1894.

INTERSTATE COMMERCE COMMISSION,

Washington, March 2, 1894.

"Dear Sir:

Pursuant to a call issued on January 20, 1894, a conference was held at the office of the Commission on February 12 and 13, ultimo, for the purpose of affording the representatives of the carriers an opportunity to offer suggestions regarding the form in which schedules of rates should be arranged to meet the requirements of the statute. A copy of the proceedings of the conference is herewith enclosed for your information. At the request of those present a second conference will be held at the office of the Commission in Washington, on Wednesday, March 14, 1894, at 11 A. M., at which you are invited to be present.

Respectfully,

WM. R. MORRISON, Chairman."

The proceedings of these two conferences, which have been published in full from the stenographer's minutes and mailed to the principal traffic officials of the country, disclose the views of those present concerning the objects sought to be accomplished by the Commission, and the feasibility of various suggested plans for simplifying the forms and improving the construction of tariff schedules.

It seemed to be generally conceded by the railroad representatives who attended these meetings that the rate-sheets now employed are unsatisfactory in many respects and fall short of the standard contemplated by the statute. The disposition was repeatedly avowed to make such changes and corrections as might be required by the Commission, though much stress was laid upon the difficulties involved in any radical departure from existing methods. While the discussion at these conferences extended to a wide range of topics, and much of it was of an informal character, there were three subjects which received special consideration, and which are entitled to more or less prominence in this report. These are (1) "Proportional tariffs," as they are called; (2) The designation on joint tariff sheets of the carriers which are parties

thereto and the routes formed by their connected lines; and (3) The evidence that joint tariffs filed and published by one carrier are assented to and binding upon the participating carriers.

The first of these questions relates to a certain rule or principle of rate making, rather than to the medium by which charges are made known to the public; the others relate to the contents of the published rate sheet and the proof of its authenticity.

The employment of proportional tariffs appears to be very extensive, and they are applied to a large percentage of interstate business. Such tariffs establish rates of carriage which are lower between given points when the traffic has undergone transportation before reaching the first point, or is to be further transported after reaching the second, than the rates charged on like traffic which originates at one of such points and terminates at the other. The rates from New York to Chicago, subject to the Official classification, may be cited as an illustration, *viz.*:

	Classes.					
	In Cents Per 100 Lbs.					
	1	2	3	4	5	6
Regular Rates .....	75	65	50	35	30	25
Proportional Rates.....	70	61	47	33	29	24

The higher rate is charged on shipments destined to Chicago, the lower proportional rate is accepted for the carriage between those cities when the shipments are consigned to points beyond Chicago. Traffic from the Atlantic seaboard to the various Mississippi river crossings is also governed, to a very great extent, by a similar system of charges. The eastern lines have not been accustomed to publish rates to points west of the Mississippi; on such business they advertise and accept a lower rate for hauling to the river than they exact on shipments terminating at the river points. A somewhat different but quite frequent use of the proportional method is described by the following illustration: One railway between Chicago and Kansas City, for instance, has a line of its own west of the Missouri river, reaching into the corn-producing region of Kansas. Another railway from Chicago terminates

at Kansas City, yet desires to participate in the grain traffic originating in the same corn belt west of the Missouri. The first-named road, extending through to Chicago, naturally desires to route by its own rails the traffic shipped to that market; and, being able to make through rates over its own lines, refuses to join in rates from Kansas points to Chicago *via* its line to the river and thence *via* the line of its competitor. The latter, however, by means of a low proportional tariff from Kansas City can allow the former its full local rates to that point, and still compete for the business by making through rates to Chicago equally low with those made by the road having its own through line.

Various reasons are assigned by the railroads for resorting to this method of establishing rates. The use of proportional tariffs, it is claimed, furnishes the basis for arriving at the total through rates for a large section of country, when it is impracticable to publish such rates in full by reason of the great number of roads and routes which are or may be employed in effecting the transportation. It is also asserted that cases not unfrequently arise where one carrier will refuse to unite with other carriers, whose lines are physically connected with its own, in forming through routes and publishing joint rates for through traffic. Under these circumstances the proportional plan is alleged to be necessary in order that the carrier which is unable to secure such an arrangement may nevertheless make the same through rates as are offered by competing lines. It is likewise generally urged that proportional tariffs are beneficial to the public, because they supply the advantages of through routes and through rates to many localities which could obtain them in no other way.

We deem it unsuitable, however, to make any further observations at this time upon the subject of proportional tariffs and purposely refrain from expressing any opinion as to their lawfulness under the Act to regulate commerce for two reasons. One reason is that this proceeding is specially directed to an improvement of the framework and phraseology of public schedules, including evidence of authority for filing joint tariffs, and does not necessarily include the consideration of rate making rules and practices. Our present concern is



with the "forms" of tariff-sheets which are required to be filed and exhibited to the public, rather than with the principles upon which charges are adjusted in the first instance. Rates must be fixed before they can be announced, and the policy which governs their application to varying circumstances of carriage is something quite different from the means devised for insuring their proper publicity. The other reason for reserving the subject of proportional tariffs for further consideration arises from the fact that a similar question is directly involved in another proceeding now pending before the Commission, upon the petition of a party claiming to be aggrieved by the operation of this method of rate construction. Our views respecting tariffs of this description will be more appropriately made known in the decision of that case.

The failure to apprise the public and the Commission by announcement upon the printed schedules or otherwise, of the names of participating carriers responsible for the rates named in joint tariffs, and the routes by which traffic may be consigned at those rates, occasions much uncertainty and confusion, and constitutes a considerable obstacle to the enforcement of the statute. This defect in the form of published tariffs should be corrected to the fullest practicable extent. It is extremely desirable that joint schedules applied to the traffic of connecting lines should definitely name all the participating roads and indicate the various routes by which they undertake to afford transportation at designated rates. Theoretically at least such a disclosure is necessary to a complete statutory joint tariff. If this information is withheld, the printed schedule must in every case be open to some degree of criticism; it omits something which apparently ought to be stated, and leaves to inference or conjecture that which should be distinctly announced.

While it seems feasible in all cases to exhibit upon the printed joint tariff the names of the roads which unite in the joint rates thereby offered to the public, publication of the various routes formed by their combined lines may be found burdensome by many carriers and this requirement will not be insisted upon at this time. The explanation made and reasons advanced by the gentlemen who attended the recent conferences,

together with well-known facts of which we may take official cognizance, incline us to this conclusion. In some sections of the country the carriers have entered into association with each other for the purpose, among other things, of establishing a system of rates throughout the territory which they serve, and are in effect operating under a "common arrangement" in respect to transportation charges between the numerous points in such territory. The scale of charges thus fixed is given general publicity and is in the nature of a standing proposition between the members and to all other carriers to receive and forward the various classes of freight at the rates agreed upon by the association. To require every joint tariff in such cases to show in detail all the different routes which are available to shippers would be a somewhat burdensome exaction without corresponding advantage to the public. The difficulty appears to be still greater where an outside line desires to use association rates in connection with its own, in naming charges to points in association territory; under circumstances of that nature, the enumeration of the various routes to the large number of possible designations would be a considerable hardship if not a practical impossibility. But in the great majority of cases we believe it is entirely practicable to set forth upon the published tariffs not only the names of the participating carriers, but also the routes operated by them under the joint rates filed in pursuance of their mutual agreement. For the present, however, the publication of routes will not be exacted by a definite and unqualified order, though we may rightfully expect that this information will be given in future joint tariffs unless conditions exist which fairly excuse a relaxation of the rule. It is our desire to exercise the authority conferred upon us in aid of the substantial purpose of the law rather than to exist upon the technical observance of its provisions.

The third subject discussed at these conferences admits of somewhat more exact and satisfactory treatment. It was freely admitted by the railroad officials in attendance that the Commission should be furnished with proof of the authority under which joint tariffs are published and filed. Such tariffs necessarily imply an agreement between two or more carriers by

virtue of which they offer their united services at the rates therein named. They must have entered into contract relations with each other, by express stipulation or mutual understanding, which impose upon the several parties thereto the obligation to accept, for the transportation proposed by them, the aggregate charge stated in their advertised schedules. If such contracts were in writing and filed with the Commission, as other written contracts are required to be filed, the instrument itself would be the best evidence of their arrangement and no occasion would arise for additional proof. But such agreements are very rarely, if ever, reduced to writing. Almost invariably they rest in parol; quite often they are mere understandings between traffic managers, having no more definite basis than long-continued custom or the doctrine of implied consent. When a joint tariff is published under such circumstances by one of the constituent roads there is no producible evidence under the existing practice, that the other interested roads have assented to the rates thus announced. If one carrier files a tariff purporting to establish joint rates with other carriers when no agreement therefor—express or implied—exists between them, such carrier transcends its authority, misrepresents the facts, and misleads the public; if there is an agreement between them, the evidence thereof should be a matter of record or otherwise readily obtainable. These propositions are wholly undisputed; indeed, there seems to be a unanimous concession that joint tariffs filed with the Commission as required by law should be accompanied in every instance with suitable proof of their authenticity.

Without commenting on the various plans suggested for accomplishing this purpose, it may be said that the most practicable method, all things considered, appears to be one brought forward at these conferences, by which each party to a joint tariff, other than the party filing the same, shall immediately upon the issuance thereof send to the Commission a written statement or certificate indicating its acceptance of and concurrence in the rates and charges named in such joint tariff. It is assumed that the carrier which publishes a tariff of this kind would ordinarily send copies of the same to all other carriers expected to participate in the joint service thereby

announced, and it must be entirely feasible for the carriers receiving such a tariff to forward to the Commission official notice that they assent to the arrangement and are parties thereto. Thus by a simple and convenient process every party to a joint tariff will be identified, and the liability of each participating carrier will be capable of easy and suitable proof. The extreme difficulty in many cases of showing the authority for each joint tariff upon the face of the printed document, and the practical objections to other proposed plans, warrant the Commission in sanctioning this method, at least to the extent of testing its merits by actual use. Its adoption will, therefore, be required.

The further consideration which we have endeavored to give this subject of tariff construction leads to a reaffirmance of the general principles laid down in the pamphlet of December 1, 1891, above referred to. The recommendations then made by the Commission are still believed to be founded upon correct views of the law and the obligations imposed by its provisions. We yield to the representations of railroad officials who contend that joint tariffs cannot in every case contain a statement of all the routes to which they relate, and we approve the plan for authenticating such tariffs by separate certificates filed with the Commission, as a suitable and effective method of accomplishing the main purpose of the statute in this regard. This mode of furnishing authority for filing joint tariffs is expected to be applied as well to future amendments or supplements to such tariffs, and also to classification sheets and other documents for the issuance of which some evidence of authorization should be supplied. Except as indicated above, the directions published in 1891 are intended to be repeated.

The Commission has no desire to enjoin the observance of needless formalities, or to subject any carrier to unnecessary expense. We appreciate the difficulty of preparing rate sheets which approximate a perfected standard and cover every point to which criticism might be directed. Nor is it by any means easy to formulate specific rules which shall govern the details of tariff construction and serve as an unvarying pattern in all cases. For this reason, among others, the order founded upon

the present inquiry will be confined to general injunctions, except as to matters which obviously require more definite disposition. So far as specific directions are now given they are in accord with the declarations of railway officials at the conference called by the Commission and in the line with resolutions adopted by the Freight Committee of the Trunk Line and Central Traffic associations.

If the instructions contained in the pamphlet of December, 1891, are fairly observed, the grounds of complaint will be mainly removed. As those instructions are now modified in respect to routes in exceptional cases, they constitute a body of rules which traffic officials can follow without hardship or difficulty.

In addition to the matters already mentioned, attention is invited to the suggestions relating to numbering, titles, amendments and supplements, manner of changing and abrogating current tariffs, and other features of more or less importance in the construction of rate sheets. Copies of the pamphlet will be sent out with this report, and compliance with its directions will hereafter be required. By following those directions we believe that railway managers can greatly improve their published schedules and speedily bring them into substantial conformity with the demands of the statutes. Such a result will prove alike beneficial to the carriers and advantageous to the public.

We summarize this review in the following order :

#### ORDER.

The Commission having under consideration the rate sheets, schedules, and joint tariffs which, under the 6th section of the Act to regulate commerce, are required to be filed in its office and to be kept open to public inspection, and having discussed the subject with a large number of traffic officials, who, for that purpose, met the Commission in response to its invitation ; and having, as the result of such conference, made and filed the foregoing report and opinion ; and being convinced that the directions contained in the pamphlet published December 1st, 1891, should be complied with, in order to bring such rate

sheets, schedules, and joint tariffs into conformity with the statute, and to correct the defects and omissions which are now observed in such publications; and having found and decided among other things that evidence of authority for making and filing joint tariffs should in all cases be furnished to the Commission:

*It is Ordered*, That all common carriers subject to the Act to regulate commerce shall, in all future issues of their rate sheets, schedules, and joint tariffs, including all future amendments and supplements to existing joint tariffs, comply with and conform to the general rules laid down in said pamphlet of December 1, 1891, as modified by this order.

*It is Further Ordered*, That all joint tariffs hereafter filed, and all future amendments and supplements to existing joint tariffs, be hereafter so arranged and printed as to show distinctly the names of the several parties thereto.

*And it is Further Ordered*, That all common carriers subject to the Act which shall hereafter be named as parties to any joint tariff filed and published by another carrier, or as parties to any amendments or supplements to existing joint tariffs, shall forthwith upon the publication thereof file with the Commission a statement or certificate showing their acceptance of and concurrence therein and making themselves parties thereto, which said statement or certificate shall be substantially in the following form:

To the Interstate Commerce Commission,

Washington, D. C.

This is to certify that the.....Co. assents to and concurs in the publication and filing of the schedule described below, and hereby makes itself a party thereto.

Dated.....

DESCRIPTION OF SCHEDULE.

KIND.	NUMBER.	DATE OF ISSUE.	DATE EFFECTIVE.	ISSUED BY. (Name of Road.)
Tariff				
Supplement				
Amendment				
Circular				
Classification.				

(Sign).....  
 .....  
 .....

EDW. A. MOSELEY,

A True Copy.

*Secretary.*

THE SOUTHERN PAINT & GLASS COMPANY, THE TRIPOD PAINT COMPANY, F. W. HART SASH & DOOR COMPANY, LAMAR & RANKIN DRUG COMPANY, FULTON LUMBER COMPANY, F. J. COOLEGE & BROTHER, AND W. S. McNEAL V. THE LAKE ERIE & WESTERN RAILROAD COMPANY, THE PITTSBURG, CINCINNATI, CHICAGO, & ST. LOUIS RAILWAY COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, AND THE NASHVILLE, CHATTANOOGA, & ST. LOUIS RAILWAY COMPANY, LESSEES OF THE WESTERN & ATLANTIC RAILROAD.

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THE SOUTHERN PAINT & GLASS COMPANY, THE TRIPOD PAINT COMPANY, THE F. W. HART SASH & DOOR COMPANY, LAMAR & RANKIN DRUG COMPANY, THE FULTON LUMBER COMPANY, F. J. COOLEGE & BROTHER, AND W. S. McNEAL V. THE BALTIMORE & OHIO RAILROAD COMPANY, THE CINCINNATI, NEW ORLEANS, & TEXAS PACIFIC RAILWAY COMPANY, THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, AND THE EAST TENNESSEE, VIRGINIA, & GEORGIA RAILWAY COMPANY.

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*Filed February 1, 1895.*

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It appearing that the discriminations and preferences complained of in these proceedings would be removed through compliance, by carriers operating in the same territory, with the decision and order of the Commission in other cases (The Chicago & Cincinnati Freight Bureaus Cases, 4 Inters. Com. Rep. 592, 6 I. C. C. Rep. 195), and that suits are pending in the courts for the enforcement of such order, the proceedings herein were stayed until final determination by the courts in such other cases.



*Hines, Shubrick & Felder*, for complainants.

*W. E. Hackedorn* and *F. S. Foote*, for Lake Erie & Western R. R. Co.

*J. T. Brooks*, for Pittsburg, Cincinnati, Chicago, & St. Louis Ry. Co.

*East & Fogg* and *J. D. B. De Bow*, for Nashville, Chattanooga, & St. Louis Ry. Co.

*Ed. Baxter*, for the Louisville & Nashville R. R. Co.

*W. A. Henderson*, for the East Tennessee, Virginia, & Georgia Ry. Co.

*John K. Cowen* and *Hugh L. Bond, Jr.*, for Baltimore & Ohio R. R. Co.

*Judson Harmon* and *George Hoadley, Jr.*, for the Cincinnati, New Orleans, & Texas Pacific Ry. Co., and the Alabama Great Southern R. R. Co.

#### MEMORANDUM.

##### VEAZEY, *Commissioner* :

The complainants in these cases allege in substance that rates charged by the defendants for the transportation of glass from Muncie, Ind., and Pittsburg, Pa., to Atlanta, Ga., are unreasonable and unjust as compared with rates in force on the same commodity from Muncie and Pittsburg to Knoxville, Chattanooga, Birmingham, and other important points in the south, and that they afford undue preference to such localities and subject complainants and their traffic in glass and the city of Atlanta as well, to unjust discrimination and undue and unreasonable prejudice and disadvantage.

It appears that rates to Atlanta from either Muncie or Pittsburg are the sum of rates in force to and from Cincinnati or other Ohio river crossings. Glass had commodity rates from Pittsburg to points south when the complaints were filed, but these have since been withdrawn, and the rates from Pittsburg are now made on the combination above described. Glass is in Class 5 of both the Official and the Southern Railway & Steamship Association Classifications.

Since the institution of these proceedings the Commission has decided the cases of the Freight Bureau of the Cincinnati

Chamber of Commerce and the Chicago Freight Bureau against carriers from those cities into Southern territory (4 Inters. Com. Rep. 592, 6 I. C. C. Rep. 195), and the order issued in those cases directs a readjustment of rates on freight in the numbered classes from Cincinnati and Chicago to Atlanta and other points in the south, which, if enforced by the courts, wherein suits are now pending, will probably remove all grounds for complaint in the cases now under consideration. A main question here, the reasonableness and relative justice of rates from Ohio river crossings to Atlanta and other southern points, was a principal subject for consideration and decision in the proceedings above mentioned. The existing rates from Chicago to Ohio river points were not disturbed by the regulation then applied, and it is easy therefore to calculate what effect compliance with our requirements in those cases would have upon the rates herein complained of.

The rate to Cincinnati on glass in carloads is 9 cents per hundred pounds from Muncie and 15 cents per hundred pounds from Pittsburg. The through rate complained of, on glass from Muncie to Atlanta, was 65 cents, carloads, and it still remains at that figure. Taking the maximum rate prescribed by the Commission in the Cincinnati case for fifth class articles as a basis, the through rate from Muncie to Atlanta would be 44 cents, a reduction of 21 cents from the rate complained of and which is still in force.

At the date of these complaints the glass rate from Muncie to Knoxville, Tenn., was 38 cents, carloads. On April 15, 1893, this was increased by the roads to 49 cents, and that rate is now in effect. Under the maximum rate laid down in the Cincinnati case, this glass rate to Knoxville would not exceed 31 cents. Atlanta and Knoxville rates would then be in the relation of 44 and 31 respectively; at the date of complaint they were 65 and 38, and they now are 65 and 49.

When these cases were brought the glass rate from Muncie to Chattanooga was 38 cents. This was increased to 49 cents on April 15, 1893, and such rate is now in force. The Cincinnati decision would give Chattanooga a 33-cent maximum glass rate from Muncie, and Muncie glass rates to Atlanta and Chattanooga

would then be in the relation of 44 and 33 cents respectively; at the date of complaint they were 65 and 38, and they are now 65 and 49.

Similar calculation shows that Muncie glass rates to Atlanta and Rome, Ga., would, under the same decision, be 44 and 43 cents respectively; that they were 65 and 59 cents at the time of these complaints, and that they now are 65 cents to both places. Anniston, Ala., had a 64-cent rate from Muncie which was afterwards made and now is 65 cents, the same as Atlanta, and the aforesaid maximum charge from Cincinnati would give both places a rate of 44 cents on glass from Muncie.

The Birmingham glass rate from Muncie was increased from 38 cents to 49 cents on April 15, 1893, after these complaints were filed and the latter rate is now in force. The relation of Muncie glass rates to Atlanta and Birmingham was, at the date of complaint, 65 and 38 cents; it is now 65 and 49 cents, and the maximum rates set forth in the opinion in the Chicago and Cincinnati cases would allow a 44-cent glass rate to Atlanta and about 37 cents as the glass rate to Birmingham.

Using Selma, Ala., for a comparison, glass rates from Muncie were, when these cases were commenced, and they now are, 65 cents to Atlanta and 61 cents to Selma. Such maximum rates would change this relation to 44 cents to Atlanta and about 46 cents to Selma.

Basing the comparison on Meridian, Miss., the glass rates from Muncie were 65 to Atlanta and 51 cents to Meridian; the latter rate is now 49 cents. Under the maximum prescribed in the other cases mentioned these rates would stand 44 cents to Atlanta and about 46 cents to Meridian.

The rates on glass to other points in the south would of course be changed accordingly, and glass rates from Pittsburg to the various points mentioned in these complaints would be correspondingly affected. The decision in the above-mentioned cases was arrived at only after mature consideration of all the facts, including the proper interests of the carriers and the rights of the places served. We still believe that those cases were rightly decided, and we are unable to see how a separate report and order in these cases could more effectively remove

the discriminations and preferences of which complaint is made. No order will now be entered, but the proceedings will be considered as stayed until final determination of the Cincinnati and Chicago cases, now pending in the courts, and upon such determination further action will be taken herein as may appear to be required.

EDGAR W. EMERSON V. THE CHICAGO, ROCK  
ISLAND, & PACIFIC RAILWAY COMPANY.

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EDGAR W. EMERSON V. THE CHICAGO & NORTH  
WESTERN RAILWAY COMPANY.

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Complaints filed Oct. 31, 1892.—Answers filed Nov. 21, 1892, and Jan. 28,  
1893.—Depositions of the C. R. I. & P. Ry Co. filed March 31, 1893.—  
Hearing at Washington, D. C., April 9, 1894.—Briefs filed July 16, 1894.  
Decided February 1, 1895.

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Unjust discrimination in allowance of reduced rates to ministers of religion  
was alleged in these cases, but the complainant failed to show that he had  
made proper application for the reduced rate, or that such an application  
would have been refused by either of the defendants, and upon these  
grounds the complaints were dismissed.

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*H. D. Barrett*, for complainant.

*Thos. S. Wright*, for C. R. I. & P. Ry. Co.

*W. C. Goudy* and *W. F. Evans*, for C. & N. W. Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

VEAZEY, *Commissioner* :

The complaints in these cases allege that the defendants  
are carriers subject to the provisions of the Act to regulate  
commerce, that they have been and are in the habit of giving  
reduced passenger rates to some ministers of religion or min-  
isters of particular religious denominations, but that they have  
refused and continue to refuse such reduced passenger rates  
to ministers of the spiritualistic faith, to which denomination  
the complainant belongs; and complainant specifies against  
the defendant, the Chicago, Rock Island, & Pacific Railway  
Co., that upon his application made to it on the 23d day of

August, 1892, he was refused a reduced rate of fare for his transportation from Chicago, Ill., to Kansas City, Mo., upon the ground that such reduced rates were not allowed by that company to ministers of the denomination called spiritualists, and the complainant makes like specification against the defendant, the Chicago & Northwestern Railway, covering a similar application made by him, on the date above mentioned, for a reduced passenger rate over its line from Chicago to Clinton, Iowa.

The complainant claims that these refusals of defendants to grant reduced rates to him, while granting such reduced rates to ministers of other religions, were in violation of the provisions of the Act to regulate commerce.

The Rock Island Company denies that it has ever discriminated between religious denominations in granting the half-fare permits, and states its regulations covering the issuance thereof. It further avers that the complainant, in making his application, did not comply with such regulations.

The Northwestern Company claims that if the complainant did apply to one of its agents for a reduced rate permit, such application was not accompanied by the necessary credentials which are required by it when the applicant is unknown. It further avers, in substance, that under the Act to regulate commerce a carrier may discriminate between ministers of religion in the matter of reduced rates for passenger transportation.

These cases arise under that portion of the twenty-second section of the statute which provides that "nothing in this Act shall be construed to prevent railroads from giving reduced rates to ministers of religion," and the complainant claims, in effect, that where carriers do allow lower rates to any members of this class of the public they must give such reduced rates of fare to all persons who belong to that class.

At the hearing defendants' counsel moved for dismissal of the complaints on the ground that the petitioner had failed to show a cause of action.

The claim made by complainant that spiritualism is a religion was not disputed at the hearing. The complainant, a minister of the spiritualistic faith, resided in Washington, D. C. He

applied at Chicago for a "clergy rate" or half-fare permit, so that he might travel at reduced cost from that place to Kansas City by the Rock Island, and from Chicago to Clinton, Iowa, by the Northwestern, but it is clear from the evidence that he did not make application in either case in such manner as to establish his identity or give the respective general passenger offices of the defendants suitable opportunity to examine his credentials.

Both carriers grant reduced rates to ministers of religion, and both have issued permits to ministers of the spiritualistic faith. The Rock Island Company has established elaborate rules governing the issuance of these reduced rate permits. Unknown ministers who, like complainant, reside in states other than those traversed by lines in the Western Passenger Association, are granted nothing but trip permits, and then only upon production by the applicant of credentials showing him to be a minister of religion. No ticket agent is authorized to give the reduced rate to such a minister unless the applicant is provided with a trip permit issued from the general passenger agent's office. The Northwestern also requires the applicant to produce satisfactory evidence of his identity.

The complainant did not, on the date mentioned in the complaint or subsequently, submit his credentials and application for a permit at the general passenger agent's office of either company. He applied at a *ticket office* of the Rock Island, and while saying that he had them, he did not present or exhibit his credentials at the general passenger office of the Northwestern. He desired the Northwestern permit for immediate use, and his request therefore at the general passenger office, without written application or exhibition of his credentials, was refused by a young man, whose name or position is not disclosed, and with whom he became involved in some dispute or misunderstanding. What was there said is not material in the light of the other facts that complainant did not insist upon producing evidence of his identity, nor did he make any subsequent effort to secure a trip permit from the company; and this notwithstanding the complainant's belief, as testified to by him, that the permit would have been issued if he had seen the passenger agent, Mr. Thrall.

It does not affirmatively appear in these cases that either company would have refused to issue the trip permit sought by complainant on August 23, 1892, if he had taken time and pains to properly apply therefor. The essential fact of discrimination is not proved, and the motion to dismiss the complaints must therefore be granted.

We are not called upon in these proceedings to determine whether carriers are entitled under the provision in the 22d section to discriminate between religions or between ministers in the allowance of reduced passenger rates. That point is not involved in the proper disposition of these cases and is not now decided.



IN THE MATTER OF THE APPLICATION OF THE  
FREMONT, ELKHORN, & MISSOURI VALLEY  
RAILROAD COMPANY, THE SIOUX CITY & PA-  
CIFIC RAILROAD COMPANY, AND THE CHI-  
CAGO & NORTHWESTERN RAILROAD COMPANY  
TO BE RELIEVED FROM THE OPERATION OF  
SECTION FOUR OF THE ACT TO REGULATE  
COMMERCE.

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Application made	.	February 11, 1895.
Decided	.	February 11, 1895.

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Upon application by carriers to be relieved from the operation of §  
4 of the Act as to the transportation of grain and feed over their  
lines, on the ground that through failure of crops the people of the  
longer distance localities were in a measure destitute, and without neces-  
sary food for themselves and animals, a temporary order of relief was  
granted.

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REPORT AND OPINION OF THE COMMISSION.

**M**ORRISON, *Commissioner*:

The petitioners ask to be authorized to charge less for  
longer distances to Humphrey or Norfolk, and all stations  
west thereof, to and including Johnstown and Verdigre, in the  
State of Nebraska, from all stations on the Chicago & North-  
western Railway System in the States of Illinois and Iowa, and  
from Sioux City and Council Bluffs, Iowa, Omaha and South  
Omaha, Nebraska, and intermediate stations, than they may at  
the same time charge from the same places to points less distant  
than Humphrey or Norfolk, or stations above indicated west  
thereof.

On inquiry and investigation it is ascertained :

1. That the petitioners on February 6th, 1895, issued their tariff to take effect February 11th, 1895, which was duly posted and filed with the Commission, and by which they established rates on grain and feed in carloads, minimum weight of 24,000 pounds as follows: to Humphrey or Norfolk, and all stations west thereof, to and including Johnstown and Verdigre, Nebraska :

From all stations on the Chicago & Northwestern Railway System in Illinois, . . . . .	20 cts.
From all stations on the Chicago & Northwestern Railway System in Iowa, . . . . .	15 cts.
From Sioux City and Council Bluffs, Iowa, Omaha and South Omaha, Neb., and intermediate sta- tions, . . . . .	10 cts.

Said tariff to expire March 31, 1895.

2. That in the crop year of 1894 there was at Humphrey and Norfolk, and points west thereof in Nebraska, along the line of said Fremont, Elkhorn, & Missouri Valley Railroad, such a failure of crops that the people of that locality were in a measure destitute, and without the necessary food for themselves and their domestic animals.

In view of the above-ascertained facts the petitioners should be authorized to charge less for the longer distance to Humphrey or Norfolk, and places above-described west thereof, than they may charge for shorter distances, to the extent and in the manner provided for in their said tariff taking effect February 11th, 1895, and it will be so ordered.

THE TRUCK FARMERS' ASSOCIATION OF CHARLESTON AND VICINITY V. THE NORTHEASTERN RAILROAD COMPANY OF SOUTH CAROLINA, THE WILMINGTON, COLUMBIA & AUGUSTA RAILROAD COMPANY, THE WILMINGTON & WELDON RAILROAD COMPANY, THE PETERSBURG RAILROAD COMPANY, THE RICHMOND & PETERSBURG RAILROAD COMPANY, THE RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY, THE WASHINGTON SOUTHERN RAILROAD COMPANY, THE BALTIMORE & POTOMAC RAILROAD COMPANY, AND THE PENNSYLVANIA RAILROAD COMPANY, CONSTITUTING THE ATLANTIC COAST DESPATCH LINE, AND THE SOUTH ATLANTIC COAST DESPATCH LINE, AND THE SOUTH CAROLINA RAILWAY COMPANY, AND D. H. CHAMBERLAIN, RECEIVER THEREOF, AND THE RICHMOND & DANVILLE RAILROAD COMPANY, AND F. W. HUIDECOPER AND REUBEN FOSTER, RECEIVERS THEREOF.

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*Decision Filed 6th day of April, 1895.*

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Where on shipments of strawberries and vegetables from Charleston, destined for New York, delivery is made by the roads at the terminus of the rail line in Jersey City, in computing the total cost of transportation to New York, the expense of carriage over from Jersey City is to be added to the rate charged to that point.

In case of a change of delivery of such shipments from New York to Jersey City, and the maintenance after the change of the same rates to the latter as had been in force to the former city for a series of years preceding the change, the carriers are charging for a less service the compensation which they had presumably deemed adequate for a greater, and the rates as applied to Jersey City are prima facie excessive.

3. Where a carrier pays mileage for a car which it employs in the service of shippers, it is the carrier, and not the party or company from whom the car is rented, who furnishes the car to the shipper, and in such case there is no privity of contract between the car owner and the shipper.
4. It is the duty of the carrier to furnish an adequate and suitable car equipment for all the business it undertakes, and also whatever is *essential* to the safety and preservation of the traffic in transit.
5. When carriers undertake the transportation of perishable traffic requiring refrigeration in transit, ice and the facilities for its transportation in connection with that traffic are incidental to the service of transportation, and the charge therefor is a charge "*in connection with*" such service within the meaning of section 1 of the Act to Regulate Commerce, in respect to the reasonableness of which the carrier is subject to that provision of the statute.
6. *Held*, under the evidence in this case, (1) that on shipments of strawberries from Charleston to Jersey City the charge of 3 cents per quart for refrigeration *en route* is excessive, that the charge therefor should not exceed  $1\frac{1}{4}$  cents, and that the total charge per quart for the service of transportation on such shipments and necessary services "*in connection therewith*," including refrigeration, should not be in excess of 6 cents per quart; (2) that 1.4 cents per package should be deducted from the rate on vegetables shipped in standard barrels or barrel crates from Charleston to Jersey City in cases where the delivery of such vegetables has been changed from New York to Jersey City without a change in rates; and (3) that the rate on cabbages shipped in standard barrels or barrel crates from Charleston to Jersey City or New York should not exceed  $\frac{2}{3}$  of the rate on potatoes so shipped.

*Gotham & Legare* and *Asher D. Cohen*, for complainant.

*Barron & Fitzsimmons* and *A. T. Smythe*, for the Atlantic Coast Despatch Line.

*Smythe & Lee*, for the Richmond, Fredericksburg & Potomac Railroad Company.

*Brawley & Barnwell* and *A. T. Smythe*, for D. H. Chamberlain, Receiver of the South Carolina Railway Company.

*James A. Logan*, for the Pennsylvania Railroad Company.

#### REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This case involves the rates on strawberries and vegetables shipped over the lines of defendants from Charleston, South

Carolina, to Baltimore, Philadelphia, New York, and other northeastern markets. There are two complaints, both informal; one presented by the Committee on Transportation of the Truck Farmers' Association of Charleston and vicinity, and the other, of the same import, by the Railroad Commissioners of South Carolina on behalf of said association. They charge, in substance, that the rates complained of are "exorbitant," particularly those on strawberries, and it is alleged that in consequence of the high rates on strawberries only a part of the early crop can be marketed. Attention is also called to an alleged undue disparity between the rates on strawberries and those on potatoes and cabbage shipped in bulk.

The transportation for which the rates in question are charged is over what is known as the "Atlantic Coast Despatch Line" from Charleston to Baltimore, Philadelphia, and New York, and also for a part of the haul, to wit, from Charleston to Alexandria, Virginia, a point on that line, over the roads of the South Carolina Railway and the Richmond & Danville Railroad (now a part of the "Southern Railway Company" system). The latter two roads and those constituting that part of the "Atlantic Coast Despatch Line" from Charleston to Quantico, Virginia, to wit, the Northeastern Railroad Company of South Carolina, the Wilmington, Columbia & Augusta Railroad Company, the Wilmington & Weldon Railroad Company, the Petersburg Railroad Company, the Richmond & Petersburg Railroad Company, and the Richmond, Fredericksburg, & Potomac Railroad Company, all make the same answer. They deny (in the language of their answer) that the "rates and charges for the transportation of vegetables and strawberries from Charleston to New York and other northeastern points are either unreasonable, unjust, discriminating, or unduly prejudicial," and aver "that the same are fair, just, and reasonable rates for transportation of the property under the circumstances and in the manner in which such service is rendered; that the service so demanded and rendered is a special service; that the freight required to be transported is perishable in its nature, requiring quick movement, prompt delivery at destination, in many cases the special fitting up of cars, withdrawing them from other service, and

their return empty on fast time,—all involving greater expense to the defendants, and warranting higher rates than would be charged for the carriage of ordinary freight under ordinary circumstances.”

From Quantico and Alexandria on to Baltimore, Philadelphia, and New York the haul is continued over the roads of the Pennsylvania Railroad System, to wit, the Washington Southern from Quantico to Alexandria or Washington; the Baltimore & Potomac from Washington to Baltimore; the Philadelphia, Wilmington & Baltimore from Baltimore to Philadelphia, and the Pennsylvania Railroad from Philadelphia to Jersey City or New York. These companies, with the exception of the Philadelphia, Wilmington & Baltimore (which does not appear to have been made a party defendant), file a joint answer, in which, after setting forth the portions of the through line operated by each of them, they disclaim responsibility for the through rate, and deny that “the proportions of said rate received by them respectively are unreasonable, unjust, discriminating, and unduly prejudicial, as alleged in the complaint.” They further aver, in substance, that strawberries and vegetables require a special service at extra expense, and that the transportation of such traffic over their portion of the line is attended with many and unusual inconveniences and difficulties, namely, at the bridge over the Potomac and in the occupied streets of Washington, and at Baltimore, Philadelphia, Trenton, Jersey City, and over the ferry to New York; and with reference to the charge of higher rates on strawberries, they say that “the same is justified by the following, among other reasons: (a) the greater value per pound and quantity of strawberries; (b) the extremely perishable character of strawberries, entailing frequent liability on the railroad companies for loss occasioned by unavoidable delays incident to the railroad situation and other unavoidable causes; (c) the loss where the owner or consignee, aware of the decay even where the movement has been usual, neglects to claim the berries at the point of delivery and the carrier is compelled to sell the same, sometimes realizing thereon a much less sum than the cost of movement; (d) the absence of a carload rate and the prompt forwarding of shipments without

regard to quantity, so that, in many instances, the respondents are compelled to move cars containing but a portion of a load, in some instances not more than one sixth of the capacity of the car."

#### FACTS.

1. The defendants are common carriers engaged in the transportation of strawberries and vegetables from Charleston to the northeast, over through lines as hereinbefore set forth, and under joint through rates. Those rates at the date of the complaint, February 22, 1893, were as follows to Washington, Baltimore, Philadelphia, and New York:

FROM CHARLESTON.	To Washington and Baltimore.	To Philadelphia.	To New York.
	Cts.	Cts.	Cts.
1. Strawberries in small refrigerators loaded in cars (released), per 100 lbs. ....	88	88	88
2. Strawberries in refrigerator cars—cars to be furnished by shipper, and icing, etc., at shippers' expense, per 32-qt. crate. ....	176	176	176
3. Potatoes and cabbage, in bulk (released), minimum C. L. 24,000 lbs, per 100 lbs. ....	54	55	55
4. Potatoes, cabbage, apples, onions, turnips, per standard bbl. or bbl. crate. ....	60	61	61
5. Squash or cymblings, eggplant, per standard bbl. ....	60	61	61
6. Vegetables, N. O. S., beans, peas, cucumbers, per standard bushel box. ....	30	31	33
7. Vegetables, N. O. S., kale and spinach, per bbl. ....	60	61	66
8. Asparagus in crates, 24 bunches. ....	100	100	100
9. Asparagus in crates, 35 bunches. ....	135	135	135

The foregoing rates on strawberries appear from tariffs on file in this office to have been in effect as far back as April 5, 1889, and the evidence tends to show that they were in existence many years prior to that date.

It will be observed that rates are given above to New York but none to Jersey City.

By circular No. 3567 of the "Atlantic Coast Despatch" line, dated April 11 and effective April 17, 1893, the delivery of traffic classified as "highly perishable"—namely, strawberries and all named in the above table except cabbage, kale, spinach, and potatoes, shipped in packages—was changed from New York to Jersey City, without any change in rates. The rates, however, on strawberries in refrigerator cars and asparagus in crates were reduced March 1, 1894. The table below gives the existing rates:

FROM CHARLESTON.	To Washington and Baltimore.	To Philadelphia.	To Jersey City.	To New York.
	Cts.	Cts.	Cts.	Cts.
1. Strawberries in small refrigerators loaded in cars (released), <i>per 100 lbs.</i> .....	88	88	88	
2. Strawberries in refrigerator cars—cars to be furnished by shipper, and icing, etc., at shippers' expense, <i>per 32-qt. crate</i> .....	144	144	144	
3. Potatoes and cabbage in bulk (released), minimum C. L. 24,000 lbs., <i>per 100 lbs.</i> .....	54	55	55	
4. Potatoes, cabbage, apples, onions, turnips, <i>per standard bbl. or bbl. crate</i> .....	60	61	61	61 o
5. Squash or cymblings, eggplant, <i>per standard bbl.</i> .....	60	61	61	
6. Vegetables, N. O. S., beans, peas, cucumbers, <i>per standard bushel box</i> .....	30	31	33	
7. Vegetables, N. O. S., kale, and spinach, <i>per bbl.</i> .....	60	61	66	66 x
8. Asparagus in crates, <i>24 bunches</i> .....	85	85	85	
9. Asparagus in crates, <i>35 bunches</i> .....	120	120	120	

o Potatoes and cabbage.      x Kale and spinach only.

There appears to be no carload rate on any of this traffic except potatoes and cabbage shipped "in bulk." The weights of the different packages are estimated as follows:

32-qt. crate of strawberries in refrigerator cars.....	50 lbs.
Potatoes, apples, onions, <i>per barrel</i> .....	} 180 "
Cabbage, <i>per barrel or barrel crate</i> .....	
Squash, cymbling, and eggplant, <i>per barrel</i> .....	



Vegetables, N. O. S., beans, and peas, <i>per bushel box</i> ...	50 lbs.
Cucumbers, <i>per bushel box</i> .....	75 "
Vegetables, N. O. S., <i>per barrel</i> .....	150 "
Kale and spinach, <i>per barrel</i> .....	60 "
Asparagus, <i>per crate of 24 bunches</i> .....	65 "
Asparagus, <i>per crate of 35 bunches</i> .....	96 "

On the basis of these weights the current rates *per 100 lbs.* are :

FROM CHARLESTON.	To Washington and Baltimore.	To Philadelphia.	To Jersey City.	To New York.
	Cts.	Cts.	Cts.	Cts.
1. Strawberries in small refrigerators loaded in cars (released).....	88	88	88	
2. Strawberries in refrigerator cars—cars to be furnished by shipper, and icing, etc., at shippers' expense, in 32-gt. crates.....	288	288	288	
3. Potatoes and cabbage in bulk (released), minimum C. L. 24,000 lbs. ....	54	55	55	
4. Potatoes, cabbage, apples, onions, turnips, in standard bbl. or bbl. crate.....	33½	33½	33½	33½ o
5. Squash or cymblings, eggplant, in standard bbl. ....	33½	33½	33½	
6. Beans and peas, in bushel box.....	60	62	66	
7. Cucumbers, in bushel box.....	40	40½	44	
8. Kale and spinach, in bbl.....	100	101½	110	110 x
9. Asparagus in crates of 24 bunches.....	130	130	130	
10. Asparagus in crates of 35 bunches.....	125	125	125	

o Potatoes and cabbage.      x Kale and spinach.

2. Prior to April 17, 1893, and at the time the complaints in this case were filed, the place of delivery of strawberries and other traffic from the South classified as "highly perishable" had been in New York, and the Pennsylvania road had transported the cars containing this traffic from Jersey City over to New York on floats. While delivery was so made in New York, the through rate covered this carriage of the cars from Jersey City to New York, but the change in delivery was accompanied by no change in the rate. Neither the cost to

the Pennsylvania road of this service of transportation on floats from Jersey City to New York, nor the amount it was allowed on this account out of the through rate, is given. Whatever that cost was, it was saved to the road by the change in the place of delivery. About a year prior to the change, the Pennsylvania road had established a ferry of its own from Bay street, Jersey City, four blocks above its Jersey City depot, to 13th street, New York. This ferry, it is stated, was being run at a loss. Delivery at Jersey City would increase the business of the ferry, as the New York jobber or consignee to whom delivery was made there would send his cart, wagon, or truck, empty, over the ferry and have it returned loaded, paying ferriage both ways. The Pennsylvania road, the owner of the ferry, receives this ferriage in addition to its proportion of the through rate. The extent of the loss alleged to have resulted from the operation of the ferry *prior* to the change of delivery does not appear, and we are not advised whether or not it continued after the new arrangement went fully into effect. The witness for the road, who testified to this loss and who was its general freight agent at New York (having charge there of the freight business, terminals, and stations), refused to say that it was or had been equal to the cost of "floating" the cars over from Jersey City. Unless the net loss by operation of the ferry continued after the change in delivery to at least equal the cost of the "floating," or the amount allowed the road out of the through rate for that service, it would seem that the road would be the gainer by the change in delivery. It appears probable that the ultimate result in this particular, after the change had increased the business of the ferry, would be to the advantage of the road.

The establishment of a different place of delivery, it appears from the evidence on the part of the road, was necessary because, on account of the increase from year to year in the volume of the traffic, the business could no longer be handled on the New York side. The place of delivery for two years prior to the change had been Pier 29, New York. The space there was found to be inadequate for the increasing business and no more could be had. The road owned land in Jersey City and could get more, and, it is stated, for the purpose of

*developing this property* and affording necessary facilities to receivers of the traffic and for handling the business, that locality was selected. Potatoes, cabbages, and kale, in packages, and watermelons (classed as "ordinary perishable"), were still delivered at Pier 29, it being thought that there would be room there sufficient for the handling of that traffic and the general business of the road after the delivery of the "highly perishable" had been transferred to the Jersey side. It is claimed on the part of the road, not only that the change in the place of delivery of this traffic is justified on the ground of *necessity*, but also that it is beneficial to the traffic itself (or to the shippers, receivers, retailers, and consumers thereof), in that it can be more conveniently, expeditiously, and economically brought to market in New York from Jersey City than from Pier 29. This pier is located as far down the city as Canal street and it is testified that about 90 per cent of the vegetable traffic is consumed above that street. The New York terminus of the new ferry (on 13th street) is from a mile and a quarter to a mile and a half above Pier 29, and it is estimated that 75 per cent of the traffic is consumed above that terminus. It is claimed that when it reaches that point, the traffic is nearer the bulk of consumers and also the retail grocery stores and the warehouses of the jobbers, than at Pier 29, and that, at the Jersey City delivery, it will be more accessible to receivers and capable of much more speedy removal than at Pier 29 because of the crowded condition of the latter and the streets in its vicinity. The reason given for delivering "highly perishable" traffic in Jersey City and continuing the delivery of potatoes (in packages) and other "ordinary perishable" traffic in New York, is that the former requires prompter handling and removal to market than the latter. There are, also, two other ferries from the Pennsylvania road depot in Jersey City, running, respectively, to Desbrosses and Cortlandt streets, New York, and it is stated that the road proposes, when its facilities at the Jersey City delivery are sufficiently advanced, to transport traffic over those ferries for the accommodation of the "down town" trade. The Jersey City delivery is much more capacious than at Pier 29 and facilities there for handling and delivering the traffic on a

large scale and of an expensive character are, it is said, to be provided.

On the other hand, the shippers and dealers take a different view of this change of delivery and complain of it on the ground that it will involve both additional expense and greater delay in getting the traffic to market. The ferriage and cartage, going and returning, will be at shipper's expense.

The ferriage charges are given by a witness for the defendants as follows:

One single horse truck (going) without load, 15 cts.

One single horse truck (returning) loaded, 25 *barrels*, 25 cts.

*Round trip*, 40 cts.

One two horse truck (going) without load, 25 cts.

One two horse truck (returning) with load, 50 *barrels*, 38 cts.

*Round trip*, 63 cts.

A witness for the complainants (a dealer in potatoes) testifies that the "lines" (presumably truck or dray lines) "charge 10 cts. a barrel and 5 cts. a package and pay their own ferriage." It appears from certain bills or accounts of sales of strawberries introduced in evidence that the drayage *from Pier 29, the old place of delivery*, was 10 cts. per crate of 32 quarts. From this data it is impossible to estimate what the cost of ferriage or drayage *from the Jersey City delivery* will amount to per quart or 100 lbs. or any given quantity of berries or other traffic *shipped in crates*.

Berries deteriorate rapidly after being removed from the ice, and delay in getting them from the car to the market results in greatly diminishing their market value. It is testified on behalf of the shippers that it will require more time to reach the market from Jersey City than from the New York delivery, that the market in New York was practically at the docks or place of delivery, but that this will not be the case as to the Jersey City delivery, and that if the goods were disposed of there they would bring less than when delivered on the New York side.

Of the articles named in the tables of rates heretofore given, strawberries, asparagus, potatoes, and cabbage in bulk, apples and onions and turnips in barrels, squash or cymbling and egg-plant in barrels, and vegetables, N. O. S.,—beans and peas and

cucumbers in standard bushel box, are delivered at Jersey City, and the same rate is charged on all of them as was charged when they were delivered in New York, with the exception of strawberries and asparagus, as hereinbefore shown. Potatoes and cabbage in standard barrel or barrel crate, and kale and spinach in barrels, are the only articles named in those tables which are still delivered in New York.

3. Early in the season shipments of strawberries are by express; some shipments are also made in small refrigerators or refrigerator chests, "loaded in cars;" but the bulk of the strawberry shipments from Charleston are in refrigerator cars in crates of 32 quarts. The icing is at the shipper's expense, and the roads collect from him on this account 2 cents per quart of strawberries, which is paid by them to the refrigerator company which furnishes the cars. The ice in the refrigerator cars has to be replenished from time to time as it melts. For this purpose the cars are stopped at suitable places. At these points the ice is furnished and placed in the car by contractors with the refrigerator company. It does not appear that the refrigerator company rendered any further service. The cost of ice is given in the complaint at \$5.00 per ton, and at the hearing it was stated that it was advertised in Charleston at \$3.00 per ton. The testimony on the part of the roads is that seven tons is required on an average load of strawberries from Charleston to New York. The average carload, as will be hereafter seen, is about 9,000 lbs. or 5,760 quarts. Seven tons at \$5.00 per ton would be, on a carload of 9,000 lbs. or 5,760 quarts, 6.07 mills per quart.

The rate of \$1.76, in force when the complaint was made, on a 32-quart crate shipped in a refrigerator car, was  $5\frac{1}{2}$  cts. per quart, and this added to the 2 cts. paid the refrigerator company, amounted to  $7\frac{1}{2}$  cts. per quart and to \$2.40 per crate of 32 quarts. As these crates weigh 50 pounds, the charge to the shipper per hundred pounds (64 quarts) was \$4.80. Of this, \$3.52 went to the carrier and \$1.28 (2 cts. per quart) was paid by the carrier to the refrigerator company. Under the present reduced rate of \$1.44 per crate of 32 quarts, which became effective March 1, 1894, the rate per quart is  $4\frac{1}{2}$  cts. and, if the amount paid the refrigerator

company is still 2 cts. per quart, the total charge to the shipper is  $6\frac{1}{2}$  cts. per quart, \$2.08 per crate of 32 quarts and \$4.16 per hundred pounds. Of the last amount, \$2.88 goes to the road and \$1.28 to the refrigerator company. The present rate is less than the rate in force when the complaint was filed by 32 cts. per crate and 64 cts. per hundred pounds.

The reduction in the rate on asparagus in crates of 24 bunches is about 23 cts. per hundred pounds and in crates of 35 bunches about 15 cts. per hundred pounds.

4. The testimony as to the weight of the average carload of strawberries from Charleston to New York is conflicting. One statement put in evidence by the defendants shows an average of 7,500 pounds, and another, also introduced on behalf of the defendants, an average of 12,747 pounds. On the whole, a fair estimate seems to be 9,000 pounds, and this is the basis of the calculations made at the hearing, and set forth in the record of the testimony. A carload of 9,000 pounds at the rate of \$1.76 per crate of 32 quarts, or \$3.52 per 100 pounds, in force when this proceeding was instituted, would yield an aggregate rate of \$316.80. A carload of that weight would contain 180 crates of 32 quarts, weighing 50 pounds per crate, or 5,760 quarts. At 2 cts. per quart, the charge for ice or refrigeration would amount to \$115.20, which, added to the above aggregate rate, gives \$432 as the total paid by the shipper on such a carload for transportation and refrigeration. Under the existing rate of \$1.44 per crate of 32 quarts, or \$2.88 per 100 pounds, the aggregate rate on a carload of 9,000 pounds would be \$259.20, which, added to the charge for refrigeration, \$115.20, amounts to \$374.40.

The evidence is silent as to whether the rate on strawberries in 32-quart crates shipped in refrigerator cars covers the weight of the crate or package, but as this is the general rule as to packages, the presumption is that it does. This being so, the cost of transportation to the shipper on the *actual* amount of strawberries shipped is greater than is shown by the rate; how much greater, in the absence of proof of the weight of the crate, cannot be determined. In addition to the amounts paid the carrier for rate charges and icing, the shipper has to pay commissions on sales of from 5 to 10 per

cent, and cartage, and also, since the change of delivery in April, 1893, ferriage from Jersey City to New York.

5. The season for shipping strawberries from Charleston begins about or soon after the first of April and is over before the end of May, the shipments being heaviest from the middle of April to the middle of May. During the first part of the season, the Charleston shipper meets competition in the New York market from points further south in Florida, and in the latter part from Norfolk and other points north of Charleston. The prices realized are highest early in the season, but later, when competition is met with berries from localities to the North, prices decline and soon reach a figure too low for profitable shipment. There were introduced in evidence on part of the defendants the daily numbers of "The Producers' Price Current" of New York, for the months of May and June, 1892. In these the quotations from April 1 to 23 are of prices of strawberries shipped by express. The quotations on shipments in refrigerator cars begin April 22 and end May 26. The highest price quoted during that period was 40 cts. per quart, April 22 and 23, and after that the highest was 30 cts., April 29 and 30. In May the prices declined materially, the highest during that month being 25 cts. The lowest price, 7 cts. per quart, was reached May 16; after that, prices were very low and quotations (and presumably shipments) ceased May 26. The average of the quotations for the season on shipments in refrigerator cars appears to be about 19 cts. These quotations are, doubtless, based on some standard of quality or condition, and the prices actually realized by the shipper must vary according to the condition of the berries at the time of sale, and in many instances be less than the amount indicated by the prices quoted. The evidence does not furnish any reliable data as to the actual average price realized by the shipper throughout the season.

At the average quoted price of 19 cts. per quart, a carload of 9,000 pounds, or 5,760 quarts, would bring \$1,094.40. On such a carload, as heretofore shown, the sum of the aggregate freight charge under the old rate and of the charge for refrigeration was \$432 and under the new rate it is \$374.40. Subtracting these sums from \$1,094.40, the gross proceeds of

sale, there is left in the former case \$662.40, and in the latter \$720. To arrive at the net profit of the shipper or producer, there must be made the further deductions of commissions on sales, which, at 8 per cent, amount to \$87.55, ferriage from Jersey City to New York, cartage, the interest on investment, the cost of production or raising and of gathering, preparation for transportation, and delivery to carrier. As before stated, there is no evidence from which the cost of ferriage or cartage per quart or any given quantity of berries can be ascertained. There is also no satisfactory evidence as to the cost of production and interest on investment, and none whatever as to that of gathering, preparation for transportation, and delivery to the carrier. A witness engaged in the business near Charleston testifies that one season the cost to him of raising, up to the time the crop was ready for harvesting and exclusive of picking, boxing, and cartage or delivery to carrier, was \$150.23 per acre; that he *shipped* 1,821 quarts per acre, and that the cost per quart of raising was from  $7\frac{1}{2}$  to 8 cts.  $7\frac{1}{2}$  cents per quart on a carload or 9,000 lbs., or 5,760 quarts is \$432. As 1,821 quarts at  $7\frac{1}{2}$  or 8 cents a quart amount to about \$150.23. the cost of raising an acre of strawberries is in this estimate placed on the strawberries *shipped*. The evidence is that shipments stop in the latter part of May, before the crop is exhausted, and about 25 per cent, or a greater proportion of the crop, is not shipped North. Of this a large amount rots in the fields, and an inconsiderable portion is sold in Charleston at a very low price. The cost of raising, it is also stated, varies with the seasons. While this cost cannot be definitely stated from the testimony, it is evident that it is large, and when taken in connection with the other items of expense,—rate and refrigeration charges, commissions, ferriage, cartage, and the cost of picking, boxing, and delivery to the carrier,—and leaving out of the account the interest on investment, there is not left a large margin of profit to the shipper or producer. The evidence is, however, that the result as to those engaged in the business around Charleston has been that, on the whole, taking good years with bad, they have managed to make “a living and some more.” The testimony



to this effect related to the business prior to the change of the delivery from New York to Jersey City, and prior to the reduction, which became effective March 1, 1894, in the rates on strawberries and asparagus.

6. The strawberry and vegetable traffic comes to the roads at a time when business in other traffic is dull. While, as before stated, the season for shipping strawberries from Charleston to New York begins in April and ends in the latter part of May, before all the crop is disposed of, other vegetables are shipped from April to July. The entire crop of no vegetable, however, is shipped. This, in the case of both strawberries and other vegetables, cannot be attributed solely to freight rates and other charges, but is due mainly to competition in the latter part of the season from points north of Charleston, *particularly* Norfolk. When the shipping season begins at Norfolk, that city has the advantage of Charleston because it is much nearer the market, and shipments of berries and other "highly perishable" produce are made by water. For this reason, Norfolk has rates less in proportion to distance than those from Charleston. There does not appear to be any appreciable water competition in the transportation of strawberries from Charleston to New York, the distance and consequently the time consumed in that mode of transit being too great. The distance from Norfolk to New York by the rail line is 345 miles, while, as before stated, it is 740 miles from Charleston to New York over the line of the Atlantic Coast Despatch. With the exception of distance of 26 miles from Norfolk to Cape Charles, there is railroad transportation (Pennsylvania system) from Norfolk to New York, and there is water transportation by the Old Dominion Steamship Line. The water line participates in the berry and vegetable traffic, and the rates by rail and by water are said to be the same. The all rail class 1 rate per 100 lbs. from Charleston to New York is 78 cts., and from Norfolk 21 cts. The rates from Norfolk on berries and vegetables for the New York market were at the time of the complaint in this case and still are, as follows :

Kale, spinach, and cabbage per barrel.....	17 cts.
All other vegetables (including potatoes).....	per barrel, 25 "
" " " " " " " "	per $\frac{1}{2}$ bbl. box, 14 "
" " " " " " " "	per bus. box, 11 "
Berries, per 60 qt. crate.....	52 "
" " 48 " " " " " "	50 "
" " 45 " " " " " "	47 "
" " 36 " " " " " "	38 "
" " 32 " " " " " "	34 "
" " 24 " " " " " "	26 "

These rates covered delivery at New York up to May 3, 1894, when the place of delivery was changed to Jersey City without any change in the rates.

7. The distance from Callahan, Florida, by rail to Charleston is 267 miles, and to New York *via* Charleston over the Atlantic Coast Despatch Line (all rail) 994 miles. The rate on strawberries in refrigerator cars over this line from Callahan to New York is \$1.77 per 32-quart crate or \$3.54 per 100 lbs. Under this rate the delivery is at Jersey City.

8. In the table of rates from Norfolk the rate on cabbage per barrel is 17 cts. and on potatoes per barrel is 25 cts., the former being about two thirds of the latter. From the table of rates from Charleston it will be seen that the rate on both cabbage and potatoes per barrel is 61 cts.

As to risk and convenience of carriage there is no material difference between cabbage and potatoes. Cabbage occupy the same space per barrel as potatoes, but weigh less; the weight per barrel of the former being given as about 150 lbs. and of the latter as about 200 lbs. Potatoes are, however, of much greater value than cabbage. It appears from the "Producers' Price Current" introduced in evidence, that from May 17 to May 31, 1892, the average price per barrel of potatoes from Charleston, in the New York market, was fully twice as great as that of cabbage.

9. Strawberries and asparagus appear to be shipped exclusively in crates. Other vegetables are shipped in standard barrels, barrel crates, and standard bushel crates called "bushel boxes." The barrel crate is similar in size and

weight to the standard barrel, and is preferred by the shipper because "whatever is shipped in it is a more merchantable article on account of ventilation." The barrel and the barrel crate have the capacity of three bushel crates. The rate on the barrel and the barrel crate are the same. That rate from Charleston to New York is 61 cts. The rate on the bushel crate to New York is 33 cents. Cabbage and certain other articles which are shipped in barrels or barrel crates under the rate of 61 cts. are also shipped in bushel boxes or crates under the rate of 33 cts. In such cases it results that the charge on *three* bushel crates of cabbages, etc., amounts to 99 cts., whereas for the same quantity shipped in a barrel or barrel crate the charge is 61 cts. The testimony is that three bushel boxes or crates occupy somewhat more space than the barrel or barrel crate and require extra work in handling. There is also some evidence tending to show that the bushel crate packages are, on arrival at destination, more convenient for the distribution of the traffic among dealers.

10. While asparagus and other traffic are to a small extent shipped in them, refrigerator cars are run expressly for strawberries, and are returned by the roads at the close of the strawberry shipping season to the refrigerator companies. For the shipment of vegetables, in general, ventilated cars are used, which cost per car \$120 more than the box cars used for ordinary freight. The cost of the refrigerator car is said to be from \$800 to \$1,000. The ventilated cars carry other freight in connection with vegetables, and remain in use by the defendants after the close of the vegetable season. All refrigerator cars are returned empty, and but a small proportion of the ventilated cars return loaded. For the refrigerator cars the roads pay the refrigerator companies the usual mileage of three fourths of a cent, both ways. The distance from Charleston to New York by the Atlantic Coast Despatch line being 740 miles, this mileage (round trip) per car amounts to \$11.10. On the return trip these cars do not make the fast time which they make going. The crew are carried back, and there is the wear and tear of the track, locomotive, and cars, but these are not so great as when the train is loaded, and the amount of coal consumed is not so

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large. There are not, also, on the return trip the expenses of taking on ice, handling the freight at the termini of the line or of "drilling" or arranging the cars in a train (hereinafter referred to) at initial and junction points. No definite statement is given as to the difference in the expense of transporting a loaded or an empty car or train, but a railroad expert gives as a "*probably* fair estimate," that the expense in the latter case is about 65 per cent of that in the former. The average load of the refrigerator car is estimated to be from less than a half to as low as 28 per cent of its capacity, and there is transported in those cars, free of charge, about seven tons of ice. In ventilated cars about one fourth of the space is required for ventilation, and they are loaded, on an average, to about two thirds of their capacity. Strawberries and highly perishable vegetables require rapid transportation and prompt delivery at a market, and the roads have provided a special "fast freight" service for that class of traffic. The trains employed in this service are run at a speed of about 22 miles an hour, exclusive of the stops, while ordinary freight trains average about 10 miles an hour.

Under the schedule for the season of 1892, the special vegetable train left Charleston at 9.30 P. M., and arrived at Jersey City at the same hour on the second day, the time consumed in the run being 48 hours, and under that proposed for 1893, the hour of leaving was 9.30 P. M., and of arrival 6.30 P. M. of the second day, the time consumed in the run being 45 hours. It is stated that the ordinary or regular freight train would make the same run in 85 hours, not including any "lay over" at junction points. The celerity of movement of the fast freight or vegetable trains necessitates the use of air brakes and the limitation of the number of cars per train to from 22 to 27. The regular freight train is not supplied with air brakes, and the limit as to number of cars is 40. The vegetable trains have the right of way over the ordinary freight trains, and great care is required in running them on time through the streets and over the crowded and complicated tracks at Washington and the other cities and junction points from Washington on to Jersey City. The cars in this train have to be distributed, or "drilled" as

it is termed, with reference to destination,—those being placed first which are to be carried to the most distant point of delivery, and so on successively according to distance of destination. Extra facilities and labor are required of the roads in the gathering and handling of the traffic at Charleston and for its handling and delivery at New York or Jersey City. The risk of the roads on perishable traffic—particularly strawberries—is greater than on ordinary traffic, because of the rapid deterioration of the former in case of any delay in transit, and the loss of freight charges in cases where, because of its decayed condition, it is left on the carrier's hands, and on sale does not realize enough to pay those charges. Prepayment of freight is demanded, however, when it is discovered there is a "glut" which will not be relieved, and when the truck from Charleston is being superseded and rendered unprofitable by that from the country nearer the market.

#### CONCLUSIONS.

We deem it proper, as preliminary to the statement of our conclusions, to call attention to the fact that the evidence in behalf of the complainants has not been produced in full as appears to have been contemplated by them. After the taking of testimony at Charleston, April 3, 1893, further testimony was introduced by the Pennsylvania Railroad Company at Washington, April 18, 1893, and the complainants gave notice that they would adduce evidence in rebuttal. After the case had been held open for this purpose at the instance of the complainants for more than a year, the Commission was advised that the complainants would offer no further testimony because the "truck farmers," in whose interest the complaints were made, were so impoverished by the disastrous effects upon their crops of a cyclone as to be unable to bear the expense. It was not until June, 1894, that the Commission was finally notified that both sides had consented to the submission of the case "upon the records as made" and without the filing of briefs.

1. The strawberry rates complained of are the rates charged on shipments from Charleston of strawberries in refrigerator cars in 32-quart crates, which rates were, when this proceeding was instituted, \$3.52 per 100 lbs., to New York, Philadelphia, Baltimore, and Washington. Since the filing of the complaints and the taking of the testimony they have been, March 1, 1894, reduced 64 cents, and are now \$2.88 per 100 lbs. This reduction, however, as to shipments from Charleston to New York was preceded April 17, 1893, by a circular from the roads, making the rate applicable to Jersey City only, and changing the place of delivery from New York to Jersey City. Prior to this change the transportation of the traffic across from Jersey City to New York was paid for by the roads and covered by the rate; it has since been done at the expense of the shipper and over a ferry owned by one of the defendants, the Pennsylvania road. The testimony furnishes no data from which the cost of ferriage per 100 lbs. of berries can be arrived at. In the absence of such data, the proportion the cost of ferriage bears to the subsequent reduction in rates cannot be ascertained.

The average ferriage for the round trip on single and double horse trucks going over to Jersey City empty and returning loaded, on a *barrel* is, according to the testimony set forth in our statement of facts, about 1.4 cts. A barrel of vegetables is estimated to weigh from 150 lbs. to 180 lbs. The weight of a crate containing 32 quarts of strawberries is given at 50 lbs. It does not seem probable that the ferriage on such a crate would be as much as that of a barrel, but if it be, it would amount to about 2.8 cents per two crates, or 100 lbs., of strawberries. This deduction from the 64 cts. reduction in rates would leave 61.2 cts.

The cost of ferriage per 100 lbs. is doubtless small, but, whatever it may be, it is to be added to the rate of 288 cts. to Jersey City in computing the total cost of transportation from Charleston to New York. On the above basis, which is largely conjectural, the actual cost per 100 lbs. to the shipper of the transportation of his berries to New York would be 290.8 cts. The shipper was charged with the cartage before as well as since the change of delivery, and there is no

evidence as to whether it has been increased or diminished by the change.

What is said above as to change of delivery does not, of course, apply to Philadelphia, Baltimore, and Washington, where there has been no such change, and the reduced rate to which cities is 288 cts. per 100 lbs., the same as to Jersey City.

Another element of expense to the shipper incidental to the transportation of strawberries is refrigeration in transit. The shipper is charged 2 cents per quart for ice, and this, on 64 quarts or 100 lbs., amounts to 128 cents. As will be seen from our findings of facts, the cost of ice, basing the calculation upon the price per ton of \$5 named in the complaint, and which is \$2 higher than that named in the testimony for defendants, is 6.07 mills per quart on an average carload of 9,000 lbs., or a little over one fourth of 2 cts., the amount charged the shipper. At \$3 per ton, the advertised price in Charleston, as shown by the testimony of defendants, the cost of ice per quart would be 3.6 mills, less than one fourth of the amount charged the shipper. As the cost of ice at the stations where it is placed in refrigerator cars is probably greater than at Charleston, a fair estimate of the cost per quart would appear to be half a cent. We are of opinion that the charge of 2 cents per quart is excessive, and that a charge of  $1\frac{1}{2}$  cents will not be unreasonably low. This will leave 1 cent over and above the cost of the ice for the expense of its transportation and replenishment from time to time in transit. This one cent will amount to 64 cents per 100 lbs., and on an average carload of 9,000 lbs., to \$57.60. Including the  $\frac{1}{2}$  cent allowed for cost of ice per quart the charge on 100 lbs. of berries will be 96 cents, and for seven tons of ice the amount, according to the evidence, required for the trip from Charleston to New York, the total charge will be \$86.40. This will be \$12.35 per ton—certainly not unreasonably *low* for a ton of ice and its transportation from Charleston to New York.

The defendants' witnesses maintain that the roads make no contract for the ice or the refrigerator cars, but that they are furnished the shipper under contract with the refrigerator companies. The testimony for the complainants is to the

contrary. The weight and legal effect of the evidence on this point is, in our opinion, with the complainants. The undisputed testimony is that the defendants pay the refrigerator companies their usual mileage ( $\frac{1}{4}$  of a cent per mile) for their cars, and, as testified by one of their leading witnesses and officials (W. H. Joyce), this enables them "to furnish the cars themselves." The 2 cents per quart for the icing is paid by the shipper to the roads along with the regular freight charge, and by the roads paid to the refrigerator company. The evidence shows conclusively that the transaction as to both the cars and the icing is between the carriers and the refrigerator companies, and that the shipper's contract is with the former alone.

In the case of *Independent Ref. Asso. of Titusville & Oil City v. Western New York & P. R. Co.*, 4 Inters. Com. Rep. 170, 5 I. C. C. Rep. 434, this commission held that where a carrier pays mileage for a car which is employed in the service of shippers, it is the carrier, and not the party or company from whom the car is rented, who furnishes the car to the shipper; in other words, that there is no privity of contract between the car owner and the shipper. It is further held in that case (p. [169] 433) in conformity with the decision of the commission in *Scofield v. Lake Shore & M. S. R. Co.*, 2 Inters. Com. Rep. 67, 2 I. C. C. Rep. 90, that "the duty of the carrier is . . . obligatory at common law and by its charter to furnish an adequate *car equipment* for all the business it undertakes and advertises in its tariffs it will do"—citing numerous decisions by the courts. An adequate or suitable car equipment is in most cases something in addition to the naked cars or boxes themselves. Where a carrier undertakes to transport passengers, seats, water, ventilation, and light are essential to the comfort, health, and safety of the passengers; and are therefore necessary parts of an adequate car equipment for that class of traffic. So, when carriers undertake to transport highly perishable traffic, requiring refrigeration in transit, ice and the facilities for its transportation in connection with that traffic are *incidental to, and inseparable from, the service of transportation itself*. We are of the opinion, therefore, that the defendants, as common carriers, are under



the law charged with the duty of furnishing the ice necessary for the refrigeration of strawberries which they undertake to transport, that the expense thus incurred is a necessary element of the cost of the transportation of such traffic, and the amount received or demanded therefor is a freight charge. Section 1 of the Act to Regulate Commerce exacts reasonableness in "*all charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith.*" The demand and receipt of an excessive sum for refrigeration is, in our opinion, an unreasonable charge within the meaning of the law, and the defendants are in respect to such charge subject to its provisions. The defendants, in conformity with what we hold to be their legal obligation, *do furnish* the ice necessary for refrigeration, and the question in this case is simply, whether their charge therefor is, in legal contemplation, a charge for the reasonableness of which they can be held responsible under section 1 of the Interstate Commerce Law.

The rates on strawberries from Callahan, Florida, to New York, were passed upon by this Commission in the case of *Perry v. Florida Cent. & P. R. Co.*, 3 Inters. Com. Rep. 740, 5 I. C. C. Rep. 97. Strawberries from Callahan to New York are hauled by the Atlantic Coast Despatch Line practically *via* (within about seven miles of) Charleston, and the distance from Callahan is 267 miles greater than from Charleston. A rate of \$3.33 per 100 lbs. (exclusive of the charge for ice) was prescribed in that case for the haul from Callahan to New York. This rate for the distance of the entire haul, 994 miles over the Atlantic Coast Despatch Line, yields a rate per ton per mile of 6.9 cents. The present rate from Charleston of \$2.88 per 100 lbs. (exclusive of the charge for ice), taking the distance as 740 miles, gives a rate per ton per mile of a little over 7.7 cents, nearly a cent more than the rate ordered for Callahan. This excess of the rate per ton per mile from Charleston over that from Callahan may to some extent, if not entirely, be accounted for under the general rule that the rate per ton per mile decreases as the distance increases. It is to be noted, however, that in the *Perry Case* the rate prescribed covered transportation through to New York

*and not to Jersey City only.* Furthermore, the rate to be charged from Callahan was fixed upon the idea, among other considerations, that the return haul of the empty refrigerator cars was as expensive to the roads as the haul of the loaded cars to New York. There appears to have been no evidence in that case, as in the present, that the return haul of empty cars is materially less costly than the haul of the loaded cars. The proof on this point is stated in our findings of fact, and it appears from the testimony of a railroad expert, referred to therein, that a fair estimate, in his opinion, as to the cost of the return of empty cars is that it is about 65 per cent of the cost of the haul of the cars loaded.

The total amount collected by the roads from the shipper or consignee for transportation, including refrigeration under the present rates, is  $6\frac{1}{2}$  cents per quart of berries. Our conclusion is that the total charge should not exceed 6 cents per quart. This will be a reduction of 32 cents per 100 lbs., but will leave the amount to be paid by the shipper \$3.84 per 100 lbs., \$76.80 per ton, and \$345.60 per the average carload, 9,000 lbs.

The rate per ton per mile under the charge above prescribed of 6 cents per quart will be very much higher than that demanded by carriers on ordinary freight. Relatively higher rates on strawberries, however, appear to be justified by the exceptional character of the service, connected with their transportation. This exceptional service, which seems to be faithfully performed by the defendants, is necessitated by the highly perishable character of the traffic, requiring refrigeration *en route*, rapid transit in specially provided trains, and prompt delivery at destination. There is also involved in this service extra trouble in handling at receiving and delivering points, extra facilities at such points, the "drilling" of cars in a train, reduction of length of trains to secure celerity of movement, partially loaded cars, the return of cars empty, and perhaps other similar incidentals.

2. The rates on asparagus are applied to packages of 24 and 35 bunches. Those rates as well as the rates of strawberries were reduced, March 1, 1894, since the commencement of this proceeding and the hearing therein, and since the

change of delivery from New York to Jersey City. The reduction on crates of 24 bunches was from 100 cents to 85 cents, and on crates of 35 bunches from 135 cents to 120 cents. As in the case of strawberries, there is no proof of the cost of ferriage from Jersey City to New York. That cost, however, it is safe to say is many times less than the reductions in rates. There is also no reliable evidence as to other items of expense incident to the service of transportation of this vegetable, from which a satisfactory conclusion can be reached as to the reasonableness or unreasonableness of these reduced rates. Asparagus is a less perishable and less valuable article than strawberries, and refrigerator cars are not run expressly for its transportation. These and possibly other circumstances of difference call for relatively lower rates on asparagus than on strawberries. Whether the existing relation between these rates is just, we are unable from the facts presented in this case to satisfactorily determine.

3. The charge of unreasonableness in rates, made in the complaint in this case, refers, as stated at the outset, particularly to the rates on strawberries. At the hearing one of the main witnesses for the complainants, a "truck" farmer in the vicinity of Charleston (Mr. Nix), in answer to the question from a member of the Commission, "What concessions or reductions in rate should be made by the roads?" said: "I do not think they (the roads) will be called upon to make any great concessions in the rate. It would be but a small percentage, in my judgment. Some things they are excessive on. On berries, for instance, they are excessive, and on asparagus. \* \* \* Potatoes are not much out of the way. They are carried by weight and there would not be a call for much reduction on them."

In the tariff of rates from Charleston, put in force March 1, 1894, and now operative, it will be seen delivery is still made in New York of "*potatoes and cabbage, per standard barrel or barrel crate,*" and "*kale and spinach per barrel.*" There is no evidence justifying a reduction in the rates on any of these articles except cabbage.

One of the matters complained of at the hearings was that the relation between the rates on cabbage and potatoes from

Norfolk to New York was not maintained from Charleston—the rate from Norfolk on cabbage being 17 cents and on potatoes 25 cents per barrel, while from Charleston it is 61 cents on both. There is no material dissimilarity in other respects, but it appears, as stated in our findings of fact, that a barrel of cabbage weighs about 150 and of potatoes about 200 lbs., and the average market price of the former is not over half that of the latter, both barrels being of the same size and occupying the same space. As a general rule the fact that a commodity occupies more space to a given weight than another is a ground for making the rate on the former higher than on the latter, leaving out of the calculation the further fact that the greater the weight carried the greater is the consumption of fuel and wear and tear on the locomotive, cars, and track. As a general rule, also, the service of transportation is more valuable, the greater the value of the article transported, and this justifies a relatively higher rate on one article than on another of less value. If these two elements of rate making, the one existing as to cabbage and the other as to potatoes, balanced each other, it would follow that, so far as they were concerned, the rates should be the same; but they do not. As the weight of a barrel of cabbage is three fourths of that of a barrel of potatoes, and its price or value only one half (two fourths), it would seem that there is a difference of one fourth in favor of cabbage. This is upon the assumption that bulk and value should operate equally in proportion to amount in enhancing rates. However this may be, it seems clear that the rate on cabbage should be less than on potatoes. As we have seen the rate on cabbage from Norfolk is about one third less than on potatoes. Railroad officials, witnesses for the defendants, when called on to state why this was the case on shipments from Norfolk and not from Charleston, could give no satisfactory explanation whatever. The only dissimilar circumstance relating to the transportation of this traffic from Norfolk was said to be carriage by boat, but this, it was not denied, would operate equally on both commodities. In view of the relation between the rates from Norfolk, it might seem proper that the rate on cabbage from Charleston should, as the complainants claim, be made *one third*

less than the rate on potatoes. The maintenance for a long series of years of that relation on shipments from Norfolk is prima facie evidence of its fairness as to such shipments, and, in the absence of differentiating circumstances, would raise a presumption that a like relation on shipments from Charleston would be proper; but, in consideration of the proof in this case as to the difference in weight and value of the two articles, our conclusion is that the rate on cabbage from Charleston should be *one fourth* less than the rate on potatoes, or, in other words, should not exceed three fourths of that rate. Under the existing rate on potatoes of 61 cents per barrel, this will give a rate on cabbage in whole numbers of 46 cents per barrel.

4. Since the change of delivery from Jersey City, there has been no reduction in the rates on "*potatoes and cabbage in bulk, apples, onions and turnips in barrels, squash or cymbling and egg plant in barrels, and vegetables, 'N. O. S.' beans, peas and cucumbers in bushel boxes.*" The rates on these articles which were maintained before the change are still in force. The defendants claim, as appears from our statement of facts, not only that delivery at their depot in Jersey City is justified on the ground of necessity, but also that it will be beneficial to the traffic and consequently to the shipper. This is denied by the complainants, who contend that it will both put an additional expense on the shipper and result in delaying delivery and hence in injury to the traffic and themselves. Without attempting to determine towards which side the evidence preponderates, it is sufficient to say that, even though the claim of the defendants be sustained, and, furthermore, loss result to the Pennsylvania road from the operation of its ferry, the fact remains that, so long as the rates on any of the traffic affected by the change of delivery are the same to Jersey City as they had been to New York prior to the change, *the roads are charging for a less service, the compensation which they had demanded and presumably deemed adequate, for a greater.* The rates to New York had been maintained for a long period of time. The commission holds that "a railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained." *Coxe v. Lehigh Valley R. Co.* 3 Inters. Com. Rep. 460, 4 L. C. C. Rep. 555. A rate which is profitable

for transportation through Jersey City to New York is *prima facie* excessive for a haul from the same initial point terminating at Jersey City. Our conclusion is that the rates on the above articles to Jersey City should be reduced to the extent of the expense to the shipper of transporting them from Jersey City on to New York. The rate on *apples, onions, turnips, squash or cymbling and egg plant* are per barrel and the average ferriage per barrel in truck loads, as before stated, is, under the evidence, 1.4 cents. This should be deducted from the rates per barrel on those articles. As to "*potatoes and cabbage in bulk,*" and "*vegetables, N. O. S. beans, peas and cucumbers in bushel boxes,*" there is no testimony as to the charges for their ferriage and no basis for an order of reduction in rates.

5. At the hearing, attention was called to the disparity between the rates, as set forth in our findings of fact, on cabbage and certain other vegetables, when shipped in barrels and barrel crates, and the rates on such vegetables when shipped in bushel boxes (crates)—the rate on a barrel or barrel crate to New York, for instance, being 61 cents and on *three* bushel boxes (crates) containing the same quantity of traffic, 99 cents. Three bushel boxes, it appears, occupy more space than a barrel or barrel crate and call for extra work in handling and are more convenient, when they arrive at their destination, for distribution among dealers. Both rates or modes of shipment are open to the shipper, and witnesses for complainants state that they have no serious ground for complaint as to the relation between these rates. While the disparity between them is great, we have been furnished no data for determining the relation which should be maintained.

It is directed that an order issue requiring the defendants to readjust their tariffs of rates in accordance with the conclusions hereinbefore announced. Such readjustment will, of course, involve whatever changes in the rates to Philadelphia, Baltimore and Washington may be necessary to bring them into conformity with the law when compared with the rates to New York.

IN THE MATTER OF THE PETITION OF THE CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY FOR RELIEF FROM THE OPERATION OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE.

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Petition filed August 2, 1893—Heard August 15, 1893—Decided October 3, 1893.

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1. Under the proviso to the 4th section of the Act to Regulate Commerce it is left to the Commission, in the exercise of a reasonable and lawful discretion, to determine the description or exceptional character of the "special cases" in which the Commission may, after investigation, authorize common carriers to charge less for longer than for shorter distances, and the extent to which such carrier may be relieved from the operation of this section of the Act.
2. The exceptional and special nature of the cases in which such discretion may be exercised, renders the application of any general rule impracticable, and every special case must be determined upon its own facts and special circumstances and in view of the objects for which the law was enacted.
3. Additional transportation facilities and accommodations for passengers traveling to Chicago and return, during the World's Fair, are shown to be necessary to the convenience and safety of travelers. The petitioner has made provision for increased facilities by establishing a new route which can only be utilized by the acceptance of a lower rate from a longer distant point, and such acceptance without relief from the operation of the fourth section of the Act, will compel the reduction of rates which are reasonable from shorter distance points, *Held*, To secure additional guaranties for the safety and convenience of the public under conditions like these is believed to be in accordance with the spirit and purpose of the Act to Regulate Commerce, and the relief from the operation of the 4th section of the Act will be granted.

(No. 368.)

*Ramsey, Maxwell & Ramsey*, for Cincinnati, Hamilton & Dayton Railroad Company.

## REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner*:

This is an application under the fourth section of the Act to Regulate Commerce to be relieved from the operation of said section four of the Act during the continuance of the "World's Fair Exposition."

The petitioner asks that it may be allowed, in connection with the Cincinnati, Hamilton & Indianapolis Railroad Company, and the Louisville, New Albany & Chicago Railway Company, to issue excursion tickets for transportation between Lima, Ohio, and Chicago, Illinois, during the Exposition, to end October 31, 1893; such tickets to be good for the round trip from Lima *via* Piqua and Dayton to Hamilton, Ohio, over the lines of the petitioner; thence by the Cincinnati, Hamilton & Indianapolis road to Indianapolis, Indiana, and over the Louisville, New Albany & Chicago road from Indianapolis to Chicago and return. That such tickets might be sold for \$9.00, while like excursion tickets to Chicago and return might be sold for \$11.50 from Piqua and Dayton, points less distant than Lima on the petitioner's route to Chicago.

This application was filed August 2, and submitted on petition and proofs August 15, 1893. On investigation, the facts respecting the application are ascertained to be:

1. The petitioner, an Ohio corporation, caused to be inserted ten consecutive days next before and including August 14, 1893, in the Lima Daily Republican Gazette, a daily newspaper of general circulation, published at Lima, Ohio, notice that on the 15th day of that month the petitioner would apply to this Commission for a temporary suspension of the Fourth Section of the Act to Regulate Commerce, that it might establish an excursion rate of \$9.00, a lower rate from Lima, Ohio, to Chicago, Illinois, and return, than its rate from Piqua and Dayton, points less distant from Chicago on the same route.

2. The petitioner operates a line of road, as owner or lessee, from Cincinnati through the cities of Hamilton, Dayton, Piqua and Lima to Toledo, in the state of Ohio; the Cincinnati, Hamilton & Indianapolis Railroad Company operates a road from



Hamilton, Ohio, to Indianapolis, Indiana; the Louisville, New Albany & Chicago Railway Company operates a road from Indianapolis, Indiana, to Chicago, Illinois; and petitioner, in connection with these companies, has established a traffic arrangement with continuous through car service from Lima, through Piqua and Dayton to Hamilton, thence through Indianapolis to Chicago, which is the only route over which the petitioner is enabled to carry and forward freight and passengers to Chicago from Lima and points further south on petitioner's line.

3. A line of the New York, Lake Erie & Western and a line of the Pennsylvania Railroad system pass through Lima and extend to Chicago. The Pennsylvania system has a line and is a carrier of passengers and property from Piqua and from Dayton as well as from Lima; and the Pennsylvania lines are the short lines between these places respectively and Chicago. The distances from these places to Chicago over the Pennsylvania lines, and the excursion rates to Chicago and return, established by the Pennsylvania Co. are as follows:

Distance to Chicago.		Excursion Rate To Chicago and Return.	
From Lima,	208 miles .....	\$	9.00
" Piqua,	241 " .....		11.50
" Dayton,	265 " .....		11.50

The distances from these places over the petitioner's route to Chicago are:

From Lima, 276 miles; from Piqua, 332 miles; from Dayton, 305 miles.

4. The petitioner seeks to establish and maintain the same excursion rates from Lima, Piqua, Dayton, and return, which have been established and are now in force over the Pennsylvania lines. This rate, \$9.00, over the petitioner's route from Lima to Chicago and return, is less than might reasonably be demanded for the service, but will yield some profit to the carriers. The rate, \$11.50, from Piqua and from Dayton to Chicago and return, is not unreasonably high for the transportation over the through route established by petitioner through Hamilton & Indianapolis to Chicago.

5. During the continuance of the World's Fair Exposition,

travel from Lima, and points between Lima and Hamilton, has largely increased, and continues to so increase that suitable and additional transportation facilities to and from Chicago is necessary and will contribute to the convenience and safety of passengers going to and returning from the Exposition.

The proviso to section 4 of the Act to Regulate Commerce, under which relief is asked in this proceeding, is as follows:

"That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may, from time to time, prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act."

It may be assumed that when first enacted the fourth section was widely, if not generally, understood by the legal profession as establishing an inflexible rule prohibiting any greater charge for a shorter than for a longer distance, except as such greater charge might be authorized by the Commission on application made to it in accordance with this proviso; for, within five days next after its organization, numerous railroad companies, operating roads in widely separate sections of the country, and represented by learned counsel, petitioned the Commission to be relieved from the operation of "this section of this Act," and to be authorized to charge less for longer than for shorter distances. Upon investigation, the petitioners were by the Commission temporarily, and during further investigation, authorized to charge less for longer than for shorter distances. Afterwards the Commission sanctioned and the carriers made, without previous application, lower charges for longer distances under certain circumstances,—notably when necessary to meet the competition of cheaper water transportation to longer distance points as to freight which, if not carried to longer distance points over the line of the competing road, would reach such destination by water transportation.

Under this proviso it is left to the Commission, in the exercise of a reasonable and lawful discretion, to determine the description or exceptional character of the "special cases" in which the Commission may, after investigation, authorize common carriers to

charge less for a longer than for a shorter distance, and the extent to which any such carrier may be relieved from the operation of this fourth section of the Act. The exceptional and special nature of the cases in which such discretion may be exercised renders the application of any general rule impracticable, and every case must be determined upon its own facts and special circumstances, in view of the objects from which the law was enacted.

In the case under consideration it is shown that additional transportation facilities and accommodations for passengers traveling from Lima through Dayton and Hamilton to Chicago and return, during the World's Fair Exposition, are necessary to the convenience and safety of travelers to and from the exposition. The petitioner has made provision for such increased facilities by establishing a new route which can only be utilized by the acceptance of the lower rate from Lima, \$9.00, which has been established by a competing carrier having a more direct route. Such acceptance, without relief from the operation of the fourth section of the Act, would compel the reduction of rates which are reasonable from shorter distance points. It also appears that this lower rate will yield to the petitioner something more than the cost of the service, and that it will not, during the time of its acceptance, add to, but take from the cost of other transportation services over the same route.

Under conditions like these, to secure additional guaranties for the safety and convenience of the public by authorizing the petitioner to charge less for longer than for shorter distances, is believed to be in accord with the spirit and purpose of the Act to Regulate Commerce.

An order will be made authorizing a less charge for the longer distance from Lima to Chicago and return than from shorter distance points, as prayed for by the petitioner.

IN THE MATTER OF THE APPLICATION OF THE  
ROME, WATERTOWN & OGDENSBURG RAIL-  
ROAD COMPANY FOR RELIEF FROM THE OPER-  
ATION OF THE FOURTH SECTION OF THE ACT  
TO REGULATE COMMERCE.

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Petition filed, September 7, 1898—Heard and decided, October 8, 1898.

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The established rate for carrying passengers from Ogdensburg and points east of Richland on the Rome, Watertown & Ogdensburg Railroad to Chicago and return had previously been \$86.00, or \$18.00 each way. After the opening of the World's Fair the Canadian roads established an excursion rate from the points above referred to, to Chicago and return, of \$24.00. The Rome, Watertown & Ogdensburg Railroad Company and its connections, established an excursion World's Fair rate, to Chicago and return, of \$25.75, which was reasonable, from shorter distance points south of Richland, including Syracuse, N. Y. The largely increased travel during the Chicago Exposition required the use of all routes of transportation for the greater safety and convenience of visitors. On application of the Rome, Watertown & Ogdensburg Railroad Company to be relieved from the operation of the 4th section of the Act, relief was granted, and the petitioner was authorized, during the continuance of the World's Fair, to accept \$24.00 to Chicago and return, the rate established by its competitors, the Canadian roads, without reducing its greater charge of \$25.75, to shorter distance points, including Syracuse.

(No. 869.)

*Theodore Butterfield*, General Passenger Agent, for petitioner.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner*:

The fourth section of the Act to Regulate Commerce makes it unlawful for common carriers subject to its provisions to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a

shorter than for a longer distance, over the same line in the same direction, the shorter being included within the longer distance.

The proviso to this section enables common carriers to apply for relief from its provisions to the Interstate Commerce Commission, and empowers the Commission in special cases, after investigation, to authorize common carriers to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may, under this proviso, prescribe the extent to which any common carrier so applying may be relieved from the operation of this section of the Act.

Under this provision, the Rome, Watertown & Ogdensburg Railroad Company applied to be relieved during the continuance of the World's Fair from the operation of section 4 of the Act, and asked to be authorized to charge and receive less for carrying passengers from Clayton, Morristown, Ogdensburg, Norwood and other points on the line east of Richland, N. Y., to Chicago, Illinois, and return, than it charges to Chicago and return, from less distant points on its line, including Syracuse, N. Y.

1. On investigation, it is ascertained that petitioner is a New York corporation engaged in the transportation of persons and property, over its own lines in that state, and, in connection with other companies, is a carrier between points in the state of New York and points in Illinois and other states. In connection with the New York Central & Hudson River Railroad Company, the Michigan Central Railroad Company and the Lake Shore & Michigan Southern Railway Company, the petitioner is a carrier of passengers from the various points on its line to Chicago and return, by way of Syracuse, N. Y., the junction point of petitioner's line with the line of the New York Central & Hudson River Railroad.

2. The Grand Trunk Railway of Canada and the Canadian Pacific Railway, with their connections, are common carriers of persons and property between Chicago, Ill. and Morristown, Ogdensburg and other places east of Richland, on petitioner's line. The route from these places to Chicago over the Grand Trunk Railway and the Canadian Pacific Railway and connections, is mainly through the Dominion of Canada, and these carriers have established a World's Fair excursion rate of \$34.00 to Chicago and return. The established rate one way from or to

Norwood, Ogdensburg, Morristown, and Clayton, N. Y., to or from Chicago, is \$18.00. The established World's Fair excursion rate from Syracuse to Chicago and return is \$25.75, \$1.75 more than the rate over the Canadian routes from the various points on petitioner's line more distant than Syracuse from Chicago.

3. To compete successfully with the Canadian routes in the carrying of passengers to and from Chicago, the Rome, Watertown & Ogdensburg Railroad Company must maintain the same rates maintained by them from the same points on its line. While some higher rate than \$24.00, to Chicago and return, from Ogdensburg and points east of Richland, on petitioner's line, might lawfully be charged and received, this rate will yield some profit. The acceptance of this rate by petitioner, without relief from the operation of the fourth section, would require the reduction of the excursion rate, \$25.75, in force from Syracuse to Chicago and return, which is not excessive.

4. The increased and continually increasing travel between all points on petitioner's line and Chicago during the "World's Fair" requires, for the safety and convenience of visitors, that all lines and routes of transportation should be available to the public.

Practically the same question here presented has just been disposed of, and upon substantially a like statement of facts and circumstances, on the application of the Cincinnati, Hamilton & Dayton R. Co. In effect, that was a petition to be allowed to charge a lower rate, during the time of the "World's Fair," from Lima, Ohio, than from places less distant from Chicago. We said in that case: "In the case under consideration it is shown that additional transportation facilities and accommodations for passengers traveling from Lima through Dayton and Hamilton to Chicago and return, during the World's Fair Exposition, are necessary to the convenience and safety of travelers to and from the Exposition. The petitioner has made provision for such increased facilities by establishing a new route which can only be utilized by the acceptance of the lower rate from Lima, \$9.00, which has been established by a competing carrier having a more direct route. Such acceptance, without relief from the operation of the 4th section of the Act, would compel the reduction of rates which are reasonable from shorter distance points. It also appears that this lower rate will yield to the petitioner something

more than the cost of the service, and that it will not, during the time of its acceptance, add to but take from, the cost of other transportation services over the same route. Under conditions like these, to secure additional guaranties for the safety and convenience of the public by authorizing the petitioner to charge less for longer than for shorter distances, is believed to be in accord with the spirit and purpose of the Act to Regulate Commerce."

Substantially, the facts upon which relief was granted, in the case above referred to, are shown to exist in this case; besides, the facts and circumstances upon which relief from the operation of the 4th section of the Act was granted in that case, there is, in this, the additional circumstance that the carriers competing with the petitioner are the Grand Trunk Railway of Canada and the Canadian Pacific Railway of Canada, both carrying over Canadian lines; and, in view of all the circumstances, and especially in consideration of the fact that the greater safety of passengers will be promoted by making all routes and lines to and from Chicago available during the World's Fair, the petitioner will be authorized to receive less from Clayton and other points on its line east of Richland, to Chicago and return, during the World's Fair, than from shorter distance points including Syracuse, N. Y.

IN THE MATTER OF THE SAFETY OF EMPLOYES  
AND TRAVELERS UPON RAILROADS USED IN  
INTERSTATE COMMERCE.

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*July 13, 1895.*

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Petitions of J. G. McCullough and E. B. Thomas, Receivers of the New York, Lake Erie & Western Railroad Company, and other carriers, for extension of time within which to comply with sections four and five of an Act of Congress, entitled "An Act to Promote the Safety of Employes and Travelers upon Railroads by Compelling Common Carriers Engaged in Interstate Commerce to Equip their Cars with Automatic Couplers and Continuous Brakes and their Locomotives with Driving-wheel Brakes, and for other purposes," approved March 2, 1893.

Time for placing grab irons and drawbars of a standard height on cars extended.

ORDER OF THE COMMISSION.

A hearing having been had in this matter at Washington, D. C., on the 12th day of July, 1895, upon the petition of J. G. McCullough and E. B. Thomas, Receivers of the New York, Lake Erie & Western Railroad Company, for extension of time within which to comply with the provisions of sections four and five of said Act of Congress approved March 2, 1893, which said petition was filed under the provisions of section seven of said Act; and various other petitions for like extension having also been filed at or before such hearing by, or with due authorization on behalf of a large number of railroad companies engaged in interstate commerce, which said petitions, together with the petition of the Receivers of said New York, Lake Erie & Western Railroad Company, relate to nearly all the railroad mileage of the country; and representatives of various organizations of railroad employes, including switchmen, trainmen and firemen, as well as officers, representatives or counsel for all of said petitioners, having appeared and been heard at such hearing; and the proceedings at such hearing having related to the ability of the various com-



mon carriers by railroad in the United States to comply with the provisions of said sections four and five of said Act of March 2, 1893, and due and full hearing having been had in the matter;

And it appearing to the Commission that while a considerable number of carriers engaged in interstate commerce by railroad have been reasonably diligent in equipping their cars with grab irons or hand holds in the ends and sides of cars and with drawbars of the prescribed standard height, so that, in respect of such cars, they might be able to comply with the requirements of said sections four and five of said Act on July 1, 1895, the date when said sections became effective, many other carriers so engaged in interstate commerce have not been equally diligent in so equipping their cars with grab irons or hand holds and with drawbars of the prescribed standard height;

And it further appearing to the Commission that, under the operation of said sections, which prohibit such common carriers, after said first day of July, 1895, from using any car in interstate commerce which is not equipped with grab irons or hand holds, and from so using any freight car which is not provided with drawbars of the prescribed standard height, carriers who may have fitted all or a sufficient number of their cars with said appliances are, nevertheless, because of the failure of other carriers to equip their cars with the said appliances, unable to comply with the requirements of said sections in relation to the movement of interstate commerce offered for through carriage in cars of such other carriers, except by refusing to receive and move interstate commerce in such cars, and therefore that much confusion in railroad operation and much prejudice to commercial interests and railroad employment may ensue under such conditions;

And it further appearing to the Commission that the failure of many carriers to fully equip their cars so as to make them conform to the provisions of said sections is partially due to diminished railroad earnings caused by protracted depression of business since the said Act was approved, and to the insolvent condition of various carriers engaged in interstate commerce, but that carriers generally throughout the country are now using considerable diligence in equipping their freight cars with grab irons or hand holds and standard height drawbars, as required by said Act;

And it further appearing to the Commission, from the evi-

dence and statements of representatives of railroad employes, that the exercise of too great haste in the application of grab irons or hand holds to such cars may, through insecurity of fastening, result in much danger to men employed in coupling and uncoupling cars; and further, that a greater degree of uniformity in the placing of grab irons or hand holds upon such cars will probably ensue from proposed conferences between committees of railroad employes, railroad car builders and railroad officials, it being conceded that substantial uniformity is essential to the greater security of men required to couple and uncouple cars;

And it appearing that divers good reasons exist for some extension of the time within which carriers engaged in interstate commerce by railroad are required to comply with the provisions of sections four and five of said Act of March 2, 1893, and that all interests concerned will be served by the granting of a reasonable extension of such time to all carriers so engaged in interstate commerce;

*It is Ordered*, That the time within which the several common carriers of the United States engaged in interstate commerce by railroad shall comply with the provisions of section four of said Act of Congress, approved March 2, 1893, which prohibits the use of any car in interstate commerce that is not provided with secure grab irons or hand holds in the ends and sides of such car for greater security to men in coupling and uncoupling cars, be, and is hereby, extended from the first day of July, 1895, when said section became effective, to and until the first day of December, 1895, and for such time only.

*And it is further Ordered*, That the time within which the several common carriers of the United States engaged in interstate commerce by railroad shall comply with the provisions of section five of said Act of Congress, approved March 2, 1893, which prohibits the use of any car in interstate commerce that is not provided with drawbars of the standard height, heretofore duly prescribed as required by said section, be, and is hereby, extended from the first day of July, 1895, when said section became effective, to and until the fifteenth day of February, 1896, and for such time only.

THE MICHIGAN BOX COMPANY V. THE FLINT &  
PERE MARQUETTE RAILROAD COMPANY, THE  
MICHIGAN CENTRAL RAILROAD COMPANY,  
THE LAKE SHORE & MICHIGAN SOUTHERN  
RAILWAY COMPANY, THE CANADA SOUTHERN  
RAILWAY COMPANY, AND THE CHICAGO &  
GRAND TRUNK RAILWAY COMPANY.

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Decided . . . . . July 24, 1895.

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1. The railroad companies named as defendants established and maintained a rate of 15 cents per hundred pounds on box shooks, and a lower rate of 12 cents per hundred pounds on lumber, laths and shingles carried from Bay City, Michigan, to Buffalo, Black Rock, Tonawanda and Suspension Bridge, New York. A carload of lumber weighs about 86,000 pounds; a carload of box shooks or shingles weighs about 80,000 pounds. Lumber carried in carloads is worth from \$350 to \$800 per car; a carload of box shooks is worth about \$220. The freight charges on both lumber and box shooks are about \$48, and on shingles about \$36 per carload. The rates on these several products are the same from Bay City to Cleveland and ports on Lake Erie other than Buffalo, and to points in Illinois, Indiana, Ohio, and other states. *Held*, that the higher rate on box shooks was not justified, and was excessive.
2. After complaint and investigation, but before decision by the Commission, the carriers complained against reduced the rate to the extent that it was alleged to be excessive. *Held*, that any order in respect of the rate of charges is unnecessary now that they are no longer excessive.
3. Where reparation is asked to the extent of alleged excessive charges, the allegation being sustained, reasonable time will be allowed for making proof of amounts paid, when the evidence produced shows excessive payments without disclosing the amount of excess.

*M. J. Beardsley*, for Complainant.

*Wm. L. Webber, Esq.*, for The Flint & Pere Marquette Railroad Company.

*Ashley Pond, Esq.*, for The Michigan Central Railroad Company and the Canada Southern Railroad Company.

## REPORT AND OPINION OF THE COMMISSION.

*MORRISON, Commissioner :*

The complainant manufactures box shooks at Bay City, in the state of Michigan, and ships them over the defendants' roads to various points in other states, including Buffalo, Tonawanda, Black Rock and Suspension Bridge, in the state of New York.

The defendants have established and maintained a tariff rate of 15 cents from Bay City to Buffalo, Tonawanda, Black Rock and Suspension Bridge, New York, on the 100 pounds of box shooks, destined to these or to more eastern points, while they charge a lower rate of 12 cents on the 100 pounds of lumber, shingles laths and other forest products, not including box shooks, from Bay City to the other above-named places without regard to place of destination and the complainant avers that the defendants in making this higher charge on box shooks unjustly discriminate against box shooks in the matter of transportation charges and in violation of the Act to Regulate Commerce; and complainant further avers :

"That this discrimination against our products in the matter of freights we have been obliged to pay to the points named, and our inability to secure trade which we otherwise could have got, has caused us a damage of fully \$500.00 since the 26th day of March, 1890, to the present time, which amount the defendants ought to return."

Wherefore the complainant prays the Commission to investigate the matter, order the defendants to desist from such alleged violation of the Act, and to further order as the Commission may deem necessary.

The Chicago & Grand Trunk Railway Company, answering separately, admits that it has established and maintains a higher rate of 15 cents on box shooks as stated in the complaint, denies that its rates are unlawful, and avers that the lower rate on lumber, shingles and laths is maintained to meet water competition, which competition does not exist as to box shooks, because, it alleges, these are liable to injury by handling in transfer when shipped by water, and are therefore not so shipped, and that the rate on these is no more than reasonable for the transportation.

The defendants other than the Chicago & Grand Trunk Railway Company, separately answering, deny that, in their several tariffs, box shooks are classified the same as lumber, laths and shingles and other forest products, or that box shooks are included in the general term "forest products;" and said defendants affirm that box shooks is a specially manufactured article upon which the defendants are not required to name the same rate as upon lumber. They deny that their transportation charges are unreasonable or that they have made any unjust discrimination against box shooks.

On investigation it is found that the complainants make and ship and the defendants carry, lumber and other products above-named, and have established and maintained rates of charges over their roads between Bay City and New York points, as above stated.

From Bay City, which is on the Saginaw river, there is water transportation to Saginaw Bay, Lake Huron, Lake Erie, and Lake Erie ports, including Buffalo, N. Y., and to Black Rock, and Tonawanda, New York points on the Niagara river above Suspension Bridge.

Box shooks, in many railroad tariffs designated "Box stuff," are planks or boards, dressed or undressed, sawed or cut in widths and lengths, and only need nailing together to make them into boxes of various sizes. The parts or material for a single box, bound in a bundle, is a box shook. They are made of lumber of inferior grades, "cullings," and a carload is worth about \$220.00. A carload of lumber weighs about 36,000 pounds; of box shooks about 30,000 pounds; of shingles about the same as box shooks. Lumber, both dressed and undressed, shipped at the commodity rate, includes higher grades, and is worth from \$350 to \$800 per carload. The freight on a carload of box shooks from Bay City to Buffalo and New York points above-named is about the same as on a carload of lumber, \$43; on a carload of shingles the freight is about \$36.

In the general or standard tariffs of the defendant in force up to 1885, box shooks or box stuff, lumber and other articles above-named, with other products of the forest, were rated alike. In that year the defendants issued a commodity tariff or supplemental rate sheet, which established the lower rate of 12 cents

from Bay City and other points in the Saginaw valley, Mich., to the New York points above-named, which lower rate is still maintained on lumber, shingles, staves, heading, and some other like articles, leaving box shooks subject to the higher rate of 15 cents established by the general tariff, issued previous to 1885 and still in force at the time of this hearing.

After the issuance of said commodity tariff establishing the lower rate of 12 cents on lumber, laths and shingles in 1885, thence to March 26, 1890, the complainant continued to ship and the defendants to carry, box shooks, lumber, laths and shingles from Bay City to Buffalo, Black Rock, Tonawanda and Suspension Bridge at the same rate, namely, 12 cents per 100 pounds the commodity rate on lumber, laths and shingles. Box shooks so shipped and carried were sometimes billed as lumber; at other times as box shooks, and were so billed openly and with the knowledge of both shipper and carrier. Between March 26, 1890, and the hearing in this proceeding, the complainant shipped from Bay City over the defendants' lines numerous carloads of box shooks destined to Buffalo, Black Rock, Tonawanda, Suspension Bridge, or points beyond, on all of which complainant paid more than 12 cents to Buffalo, Black Rock, Tonawanda, and Suspension Bridge, which was the rate being paid at the time to these points on lumber, laths, shingles, heading and some other like forest products.

On shipments made by water from Bay City to Buffalo, Black Rock and Tonawanda, and through these places to points further east, the cost of cartage is considerable, and the general manager of the complainant testified that complainant shipped by rail to avoid payment of expensive cartage.

The defendants maintain and their rate sheets establish, the same rates and charges on box shooks as on lumber, laths and shingles from Bay City to points in Illinois, Indiana, Ohio and other states, including the cities and ports of Toledo, Sandusky and Cleveland, Ohio, to which Ohio ports, lumber, laths, shingles and other forest products are largely carried by water from Bay City East of Buffalo, box shooks, lumber, laths and shingles are classed together and carried at one and the same rate. Practically they are so classed and carried between all points other than Bay City and said New York points of Buffalo, Tonawanda, Black Rock and Suspension Bridge.

After the hearing and investigation of this proceeding the defendants, through the Michigan Central, the Flint & Pere Marquette, and the Chicago & Grand Trunk, the defendant companies having initial lines at Bay City, filed with the Commission, to take effect February 12, 1894, "a joint commodity tariff on lumber," including box shooks, establishing the same rate of 12 cents on the several products, and after said 12th day of February, 1894, the defendants ceased making the alleged excessive and higher charges on box shooks than on lumber, laths and shingles, as the complainant asked they might be required to do.

In view of the above ascertained facts, the higher rate charged by defendants on box shooks than on lumber, laths and shingles carried from Bay City to Buffalo, Black Rock, Tonawanda and Suspension Bridge between March 25, 1890, and February 12, 1894, was not justified, and to the extent of the difference in these rates was excessive on box shooks.

The defendants, by their tariff of March 25, 1894, established the same rate, 12 cents per 100 pounds, on box shooks, lumber, laths and shingles, thus making reparation as to so much of the complaint as relates to discrimination and inequality of rates charged by conceding to the complainant the rate of charges it had asked for. Any order in respect to the charges is unnecessary now that they are no longer excessive.

The complainant asks, by way of reparation, that the defendants may be required to refund the amount of damages suffered by reason of the amount of charges in excess of 12 cents per 100 pounds on box shooks shipped by complainant over defendants' roads to Buffalo, Black Rock, Tonawanda and Suspension Bridge and for the loss of business which complainant alleges it was unable to get because of the higher rate on box shooks. The aggregate of the damages or reparation so claimed was, at the time the complaint was filed, \$500.00.

No testimony was given or offered at the hearing as to any loss of business, or tending to establish such claim.

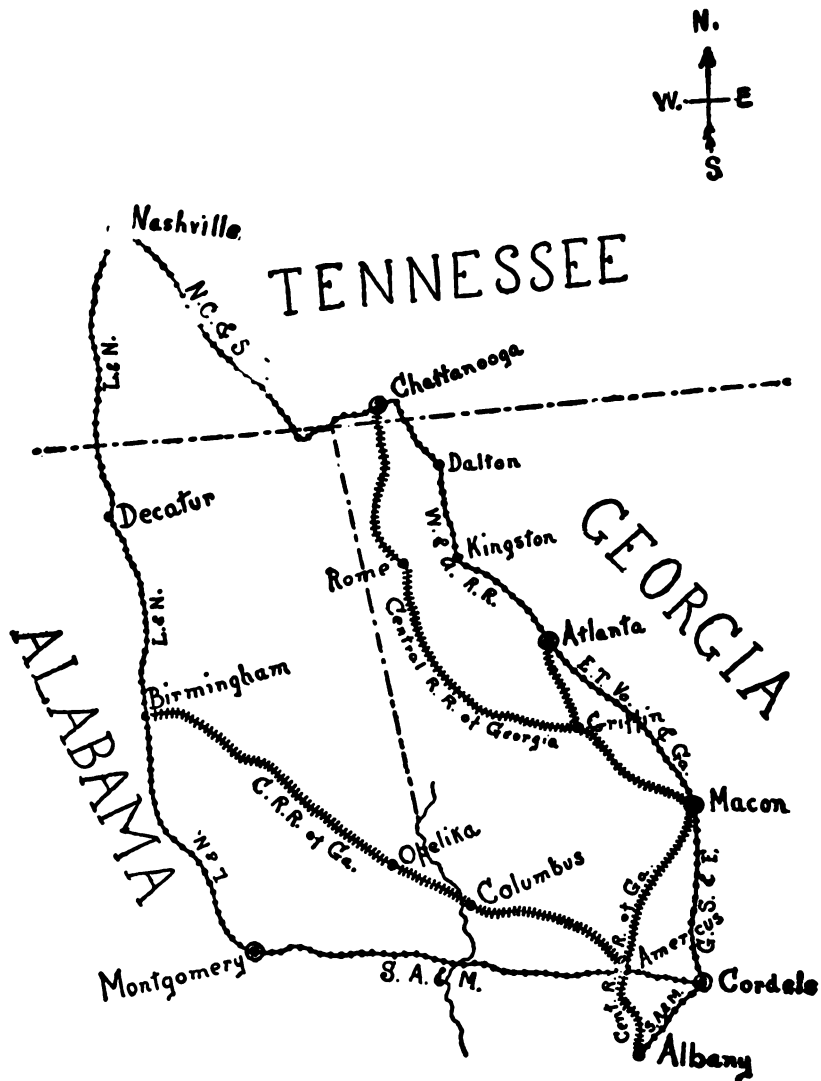
The bills of lading, expense bills and other testimony produced at the hearing, showed shipments of box shooks over the roads of the defendant companies to interior points east of Buffalo, Black Rock, Tonawanda and Suspension Bridge, at aggregate rates made up of the rate from Bay City to Buffalo and other points on

the New York border, with the rate to interior points east thereof added, and the amounts of transportation charges so added together are not separately disclosed.

The complainant is allowed until October 1, 1895, to make proof of the amounts it paid to the defendants in excess of 12 cents per 100 pounds on box shooks carried by them from Bay City to Buffalo, Black Rock, Tonawanda or Suspension Bridge, between March 26, 1890, and February 12, 1894, during which time the defendants' rate was 12 cents per 100 pounds on lumber, laths and shingles, carried from Bay City to Buffalo and other places last above-named. Without such proof, the question and amount of reparation cannot be determined.







S. J. HILL & BRO. V. NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY, WESTERN & ATLANTIC RAILROAD COMPANY, EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, GEORGIA SOUTHERN & FLORIDA RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, AND SAVANNAH, AMERICUS & MONTGOMERY RAILWAY COMPANY.

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Decided October 19, 1895.

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- 1 The competitive and basing point system under which railroad companies operating in the Southern Railway & Steamship Association territory elect distributing centers and competing points, reviewed, again condemned, and found to result in unreasonable and unlawful rates to points classed as local, and give favored business rivals unreasonable advantage.
  2. In the absence of other influential conditions, distance may be fairly considered a controlling element in fixing reasonable rates. The distance being in favor of one of two competing points, and neither the cost, the value of the service nor other conditions of transportation in favor of the other, the shorter distance point cannot justly be denied at least equal rates with the longer:
  3. *Held*, on the facts in this case, that any higher rate from Nashville, Tenn., to Cordele, Ga., than to Albany and Americus, Ga., is unreasonable and unduly prejudicial to complainants.
  4. Where carriers form an indirect line over which they transport freight and charge and receive greater compensation in the aggregate for a shorter than for a longer distance, the shorter being included within the longer:
- Held* to be unlawful and in conflict with section 4 of the Act to Regulate Commerce: and,
- Held, further*: the fact that a more direct line, over which the mileage to a longer distance point (Macon or Americus) by the indirect line is less than the mileage to a shorter distance point (Cordele) by such indirect line, may be or is formed and used in transporting grain to or from such longer distance point (Macon or Americus), does not alter or so change the conditions of transportation over the indirect line as to take it out of the rule of the statute.

## REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Chairman*:

The complaint in this case is as follows:

"S. J. Hill & Bro. v. Nashville, Chattanooga & St. Louis Railway, Western & Atlantic Railroad, East Tennessee, Virginia & Georgia Railway, Georgia Southern & Florida Railroad, Louisville & Nashville Railroad, Savannah, Americus & Montgomery Railway."

"The petition of the above-named complainant respectfully shows:

I. That S. J. Hill & Bro. are a firm in a wholesale and retail grain, hay and flour business at Cordele, Ga.

II. That defendants above-named are common carriers, and under a common control, management or arrangement for continuous carriage or shipment, and engaged in the transportation of passengers and property wholly by railroad between Nashville in the state of Tennessee and Cordele in the state of Georgia, and as such common carriers are subject to the Act to Regulate Commerce.

III. That on Aug. 8, 1892, petitioners had shipped to them from Nashville, *via* N. C. & St. L. R. R. to Chattanooga, W. & A. R. R. to Atlanta, E. T. V. & G. R. R. to Macon, and G. S. & F. R. R. to Cordele, one car of corn for which the charges were 27¢ per hundred pounds, while the same car is allowed to pass over said lines through Cordele to Americus, a greater distance by 31 miles, for 20¢ per hundred pounds.

IV. That in July, 1892, petitioners caused to be shipped from Nashville, Tenn., *via* L. & N. R. R. to Montgomery, S. A. M. Ry. to Cordele, one car of flour for which the charges were 31½¢ per hundred pounds, whereas the rate over said lines from Nashville through Cordele to Macon, a distance of 65 miles further, is only 22¢ per hundred pounds.

Wherefore the petitioners pray that the defendants may be required to answer the charges herein, and that, after due hearing

and investigation, an order be made commanding the defendants to cease and desist from said violations of the Act to Regulate Commerce, and for such other and further order as the Commission may deem necessary in the premises."

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The Nashville, Chattanooga & St. Louis Railway Company, answering for itself and for the Western & Atlantic Railroad Company, of which said Nashville, Chattanooga & St. Louis Railway Company is lessee, denies that these companies discriminate against complainant or the city of Cordele, in rates of transportation on grain, hay, flour or other freight; denies that Cordele is on a direct line or intermediate with Macon, Americus and Albany, on shipments reached over their lines; and claims that the rates to Cordele are made upon the same basis as to stations on either side of Cordele, and upon a fair and reasonable basis; and denies that they are unreasonable or discriminating in their nature, or that they are in violation of section four of the Act to Regulate Commerce.

The East Tennessee, Virginia & Georgia Railway Company, answering by its receivers, Charles M. McGhee and Henry Fink, avers that the road of said company, its assets and the transaction of its business has been placed in the hands of said receivers by order of the Federal court; and says that "this respondent has no knowledge as to what is set forth in the petition, and can neither admit nor deny the same."

The Georgia Southern & Florida Railroad Company, for answer, alleges that rates between the east and west and Cordele are made by adding locals to the current rates to or from Macon, Albany or Americus, and that this basis is proper and just to all concerned; that it does not touch Albany or Americus, or fix the rates between these points and the east and west, but has traffic arrangements with its connections which enable it to handle business to and from these points through Cordele; that it does not fix rates between Macon and the east and west, but is enabled by means of traffic arrangements with other lines, to

handle business between Macon and the east and west through Cordele; that the rates to and from Cordele are now made on a proper basis and respondent should not be required to make a change which would seriously affect its revenue, and on account of light business and increased expenses, it is not in condition to stand any reduction in its revenue; that for these reasons it would be a hardship to require it to desist from participating in business between the east and west and Albany, Americus and Macon through Cordele; and claims that it is not violating the Act to Regulate Commerce.

The separate answer of the Louisville & Nashville Railroad Company denies participation in the alleged transportation of corn from Nashville, Tenn., to Cordele, Ga., in August, 1892; it avers that in July, 1892, it did carry a mixed carload of flour, meal and bran from Nashville, Tenn., over its line to Montgomery, and there delivered the same to the Savannah, Americus & Montgomery Railroad; that said freight was consigned to S. J. Hill & Bro., Cordele, Ga., and the charges on the same were made in accordance with the published tariff rates of respondent from Nashville to Cordele; respondent further states that Cordele is not an intermediate point on the line from Nashville, Tenn., to Macon, Ga.; that Cordele is more distant from Nashville than Macon is, and that the rates from Nashville to Cordele are rightly and properly higher than to Macon.

The Savannah, Americus & Montgomery Railway Company, answering the complaint, says that the rates from western points to Americus, Albany, Macon and Cordele were fixed by the Southern Railway & Steamship Association, of which it is a member, and in fixing these rates the shortest line between two points is the governing condition; that the short line, as a rule, from western points to Macon, Americus and Albany, is *via Atlanta*; that in making up total rates from western points to Cordele the local rates are added to the established rates to Macon, Americus and Albany, and the lowest total obtained therefrom is adopted by all the lines in connection with other various routes competing for Cordele business, which results in higher rates to Cordele than to either Albany, Americus or Macon; that the lines prefer to abandon business to Cordele rather than reduce

the Cordele rates to the rates in force to more distant points in the direction in which the freight moves, because such reduction would necessitate a reduction at other points which, in the present depressed condition of the roads, would increase their difficulties; that "the conditions surrounding the business to Macon, Cordele, Americus and Albany are most widely dissimilar, the process of rate construction is also dissimilar, and the causes which operate against the rapid growth of the business of the complainants, and the city of Cordele, do not find their origin in the present construction of the rates, nor does the Savannah, Americus & Montgomery Railway discover that any injustice would be done to any party but the transportation companies, if the Interstate Commerce Commission ordered a modification of the rates, in compliance with the 4th clause of the Interstate Commerce Act."

In a paper filed by way of replication, after the defendants had filed their answers, the complainant denied asking cheaper rates, but asked equal rates with more distant points having lower rates, and avers that the defendants, by their traffic arrangements, reach Americus and Albany through Cordele, and carry freight to these more distant points at lower rates, and reach Macon through Americus and Cordele and carry freight to this more distant point, Macon, at lower rates than to Cordele.

#### FACTS.

The facts in the case are as follows:

1. Cordele is located 30 miles east of Americus, and at the intersection or crossing of the Savannah, Americus & Montgomery and the Georgia Southern & Florida roads, and a branch line of the Savannah, Americus & Montgomery railway extends from Cordele, 35 miles southeast, to Albany. Macon is 65 miles north of Cordele, by the Georgia Southern & Florida road.

The Nashville, Chattanooga & St. Louis Railway Company, the Western & Atlantic Railroad Company, the East Tennessee, Virginia & Georgia Railway Company, and the Georgia Southern & Florida Railroad Company, form a line from Nashville, *via* Chattanooga, Atlanta and Macon to Cordele, and, connecting with the Savannah, Americus & Montgomery Railway Company at Cordele, extend their line to Americus and Albany.

The Louisville & Nashville and the Savannah, Americus & Montgomery roads connect at Montgomery and form a line from Nashville through Montgomery to Americus, thence to Cordele, and thence to Albany, and connecting with the Georgia Southern & Florida Railroad at Cordele, the Louisville & Nashville and the Savannah, Americus & Montgomery roads extend their line, or form a line from Nashville through Montgomery, Americus and Cordele to Macon.

Grain and flour are carried by the defendants over some of these lines from Nashville through Cordele to Macon and to Albany, and over others through Cordele to Americus, under joint tariffs of through rates.

The distances over the most direct or short lines from Nashville to Macon, Americus, Cordele and Albany, are as follows:

*From Nashville.*

	SHORT LINES.	MILES.
To Macon, over Nashville, Chattanooga & St. Louis, the Western & Atlantic and East Tenn., Va. & Ga. roads, <i>via</i> Chattanooga and Atlanta.....		377
“ Americus, over the Louisville & Nashville road and Central R. R. of Ga. <i>via</i> Birmingham, Opelika and Columbus .....		430
“ Cordele, over Nashville, Chattanooga & St. Louis, the Western & Atlantic, East Tenn., Va. & Ga. and Georgia Southern & Florida roads, <i>via</i> Chattanooga, Atlanta and Macon .....		442
“ Albany, over Louisville & Nashville road and Central R. R. of Ga. <i>via</i> Birmingham, Opelika, Columbus and Americus.....		466

The lines named in the complaint and the distances by those lines to Cordele, Americus, Macon and to Albany, are:

*From Nashville.*

	MILES.
To Cordele, <i>via</i> Chattanooga, Atlanta and Macon, over the Nashville, Chattanooga & St. Louis, the Western & Atlantic, the East Tenn., Va. & Ga., and the Georgia Southern & Florida roads.....	442
“ Americus, <i>via</i> Chattanooga, Atlanta, Macon and Cordele, over the Nashville, Chattanooga & St. Louis, the Western & Atlantic, the East Tenn., Va. & Ga. and the	



Georgia Southern & Florida roads to Cordele, and thence to Americus, over the Savannah, Americus & Montgomery road .....	472
“ Albany, <i>via</i> Chattanooga, Atlanta, Macon and Cordele, over the Nashville, Chattanooga & St. Louis, the Western & Atlantic, the East Tenn., Va. & Ga. and the Georgia Southern & Florida roads to Cordele, and thence to Albany, over the branch line of the Savannah, Americus & Montgomery road .....	477
“ Cordele, <i>via</i> Montgomery and Americus, over the Louisville & Nashville and the Savannah, Americus & Montgomery roads .....	475
“ Albany, <i>via</i> Montgomery and Americus, over the Louisville & Nashville and Savannah, Americus & Montgomery roads to Cordele, and thence to Albany, over the branch of the Savannah, Americus & Montgomery road	510
“ Macon, <i>via</i> Montgomery, Americus and Cordele, over the Louisville & Nashville and Savannah, Americus & Montgomery roads to Cordele, and thence to Macon, over the Georgia Southern & Florida road .....	540

The short lines and lines named in the complaint, set forth in the foregoing tables, are not the only rail lines over which traffic may be hauled from Nashville to Macon, Cordele, Americus and Albany. A number of other lines from Nashville to Cordele, as well as to Macon, Americus and Albany, may be formed by different combinations of roads, with each of the two initial carriers, the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway.

As shown by the Annual Report of the Louisville & Nashville Railroad Company, one of the initial carriers, that company has, by ownership of a majority of capital stock, a controlling interest in the line of the other initial carrier, the Nashville, Chattanooga & St. Louis Railway Company.

2. The defendants have made several changes in their grain and flour rates since they were complained against. Those in force when the complaint was made, and those now in force, are shown in the following table:

From Nashville, Tenn.  To	RATE IN CENTS PER 100 LBS.				PER BARREL.	
	GRAIN.		FLOUR IN SACK.		FLOUR.	
	In force Oct. 11th, 1892.	Present Rate.	In force Oct. 11th, 1892.	Present Rate.	In force Oct. 11th, 1892.	Present Rate.
Albany, Ga.	20	21	24	25	40½	42
Americus, Ga.	20	21	24	25	40½	42
Cordele, Ga.	27	27½	31½	32½	55	57
Macon, Ga.	18	19	22	23	36	38

From June 1, 1895, to September 16, 1895, defendants' grain and flour rates were considerably lower than they now are, or were when the complaint was filed, as shown by the following table:

June 1, 1895, to Sept. 16, 1895.	RATE IN CENTS PER 100 LBS.		
From Nashville, Tenn.	GRAIN.	FLOUR IN SACK.	FLOUR PER BBL.
To			
Albany, Ga.	17	21	34
Americus, Ga.	17	21	34
Macon, Ga.	15	19	30
Cordele, Ga.	22½	27½	47

The rates on grain and flour from Nashville to Savannah and other southeastern Atlantic ports, over defendants' lines, through Macon and Cordele, are:

Grain, per 100 lbs. .... 17 cents.  
 Flour in sacks, per 100 lbs. .... 21 "  
 Flour in barrels, per bbl. .... 34 "

The sum of the local rates over defendants' several lines from Nashville *via* Macon to Cordele on grain is 49 cts. per 100 lbs.;

the local rate on grain from Macon to Cordele is 9 cents per 100 lbs.

The defendants charge complainants 57 cents for carrying a barrel of flour (200 lbs.) from Nashville through Macon to Cordele. On a barrel of flour carried through Macon to Cordele the defendants receive 38 cents for the haul to Macon. The defendants' charge is approximately a cent per ton per mile on flour from Nashville to Macon. On the same mileage basis their rate through Macon to Cordele on a barrel of flour would be 44 cents, or 13 cents less than their Cordele rate.

3. By the short lines Cordele is nearer to the ports of Savannah, Brunswick and Jacksonville than either Macon, Americus or Albany. The distances are as follows:

*From Savannah.*

TO	SHORT LINES.	MILES.
Cordele.	<i>Via</i> Lyons, over the Central of Georgia and the Savannah, Americus & Montgomery.....	169
Albany.	<i>Via</i> Lyons and Cordele, over the above-named roads .....	204
Americus.	<i>Via</i> Lyons and Cordele, over the above-named roads .....	199
Macon.	<i>Via</i> Millers, over Central R. R. of Georgia...	191

*From Brunswick.*

TO	SHORT LINES.	MILES.
Cordele.	<i>Via</i> Helena, over Southern Railway and Savannah, Americus & Montgomery road.....	167
Albany.	Over the Brunswick & Western R. R.....	171
Americus.	<i>Via</i> Helena and Cordele, over the Southern Railway and Savannah, Americus & Montgomery .....	198
Macon.	Over Southern Railway.....	190

*From Jacksonville.*

TO	SHORT LINES.	MILES.
Cordele.	<i>Via</i> Waycross and Tifton, over the Savannah, Florida & Western, the Brunswick & Western, and the Georgia Southern & Florida roads .....	186
Albany.	<i>Via</i> Waycross, over the Savannah, Florida & Western, and the Brunswick & Western roads	187

Americus.	<i>Via</i> Waycross, Tifton & Cordele, over the Savannah, Florida & Western, the Brunswick & Western, the Georgia Southern & Florida and the Savannah, Americus & Montgomery roads . . . . .	216
Macon.	<i>Via</i> Everett, over the Florida Central & Peninsula and the Southern Railway . . . . .	252

The rates from each of these ports to Cordele are in excess of the rates to Macon and Albany on all the classes, and, with few exceptions, higher than to Americus. They are, for example, as follows:

		<i>From Savannah, Ga.</i>												PER EVL.
Classes		1	2	3	4	5	6	A	B	C	D	E	H	
To Macon, Ga.		64	56	48	40	34	30	18	27	16	15	32	40	33
" Americus, "		69	63	51	43	35	33	20	28	20	19	38	48	40
" Cordele, "		94	82	74	63	49	39	37	37	19	17½	49	63	37½
" Albany, "		64	56	48	40	34	29	18	27	15	14	32	40	31

4. The rates to Macon, Americus, Cordele and Albany, both from the west and the east are regulated by the Southern Railway & Steamship Association, of which the defendants are members. In making the total through rate to Cordele, a different rule is adopted from that applied to Macon, Americus and Albany. The rates to Cordele are fixed under what is known as the "basing point" or "trade center" system; for example, on a shipment from Nashville the rate to Cordele is the through rate to Americus or Macon with the local rate to Cordele added, over either the Savannah, Americus & Montgomery or the Georgia Southern & Florida road, while the through rate to Albany is the same as to Americus, though the freight passes through Americus to Cordele and Albany. In making rates to Cordele from Nashville on corn, flour and other freights, Americus and Albany, as well as Macon, are treated as basing or competing points, and Cordele as a local station. The rate to Cordele, so made up, is the rate to one of these competing points having the lowest rate, with the local rate from such competing point to Cordele added.

Defendants claim to justify this difference in method of constructing rates on the ground that Albany, Americus and Macon are competitive points, and that Cordele is not. This system of rate making results, as appears from the foregoing tables, in

through rates to Cordele, from both east and west, very much higher in the aggregate than to Macon, Americus and Albany, as well when Cordele is the shorter as when it is the longer distance point. By the shortest line, the distance from Nashville to Americus is 12 miles less, and to Albany 24 miles more than to Cordele, but the rate to Cordele is 35 per cent higher than to either.

It does not appear that grain and flour are extensively shipped from Nashville to Macon by the indirect route over the Louisville & Nashville, the Savannah, Americus & Montgomery and the Georgia Southern & Florida roads, through Montgomery, Americus and Cordele, thence to Macon. When shipments are so made over the indirect route through Cordele to Macon, they take the regular Macon rate, which is, approximately, half as much more to Cordele than to Macon, though by this route Cordele is the shorter distance point by 65 miles.

The foregoing tables of short line distances and rates illustrate the inequality that results from the basing point system, in the rates to Cordele treated as a local noncompeting point, and to Macon, Americus and Albany treated as basing and competing points. The competition in transportation to Macon, Americus and Albany, which, it is claimed, distinguishes them as competitive points, is competition between the rail lines, the companies all being members of the Southern Railway & Steamship Association.

5. Cordele is not so large as the much older cities, Americus, Albany and Macon; its tonnage of corn and flour and other products is small in comparison with theirs, and its relatively unequal rates detract from its business and lessen the demand for these commodities. Cordele has grown up since the building of the Savannah, Americus & Montgomery Railway. In April, 1893, four years after its incorporation, it had a population of about 2500; it had a cotton mill and two saw-mills in operation, another ready for work, two in process of construction, and a number of others in the vicinity.

As dealers in grain, flour and hay, the complainants meet with the competition of Albany, Americus and Macon dealers in the same products, who have lower rates from the common source of supply.

## CONCLUSIONS.

The complaint, copied herein, is to the effect that the rates of the defendants on grain and flour from Nashville, Tenn., to Cordele, Ga., are unreasonable and unlawful, both of themselves and relatively in respect to the rates on grain and flour from Nashville, Tenn., to Macon and Americus, Ga.; that the defendants, except the Louisville & Nashville Railroad, carry grain and flour from Nashville, through Chattanooga, Atlanta, Macon and Cordele, to Americus, more distant than Cordele by this route, and the Louisville & Nashville, the Savannah, Americus & Montgomery and the Georgia Southern & Florida roads carry grain and flour from Nashville, through Montgomery, Americus and Cordele, to Macon, more distant than Cordele by this route, and charge a greater compensation for the shorter distance to Cordele by either route; that such greater charge to Cordele than to Americus and Macon respectively is unlawful and in conflict with section 4 of the Act to Regulate Commerce.

The defendants deny that their rates are unreasonable, discriminating, in conflict with section 4 of the Act to Regulate Commerce, or otherwise unlawful.

This case and the case of the Cordele Machine Shop against the last two named defendants were heard together. The rates to Cordele were the subject of both. The testimony was the same and the questions for decision were practically the same in both. In that case it was claimed, as it is in this, that rates to Cordele, Macon, Americus and Albany are made by and through the Southern Railway & Steamship Association, of which defendants are members; that in fixing these rates the shortest line between two points is the governing condition; that the conditions surrounding the business (transportation) to Macon, Cordele, Americus and Albany are widely dissimilar and the process of rate construction is also dissimilar; that in making total rates from Nashville, Birmingham and other western points to Cordele, local rates are added to the established rates from such western points to Macon, Americus and Albany the lowest total obtained and adopted by all lines competing for Cordele business, which results in higher rates to Cordele than to either Albany, Americus or Macon.

In that case, *Cordale Machine Shop v. Louisville & N. R. Co.* 5 Inters. Com. Rep. —, 6 I. C. C. Rep. 361, the Commission fully considered this system of rate making, and the alleged dissimilarity of circumstances and competitive conditions upon which defendants claimed to justify it, both in that case and in this, and said:

“This system very generally prevails in the territory over which the Southern Railway & Steamship Association assumes jurisdiction in the matter of fixing and adjusting rates to points in such territory designated as basing or competing points. Its prevalence was and is claimed to be the outgrowth of competitive conditions and was brought to the attention of this Commission soon after its organization, when the Commission said (*Re Louisville & N. R. Co.* 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31,—opinion by Chairman Cooley):

‘The pre-eminence of trade centers in the territory reached by the petitioner’s road is peculiar and has probably been increased by the concessions in rates which the railroads have made to them, while making less concessions or none at all to less important stations. This condition of affairs tends to perpetuate itself, and the disparity of rates as between competitive and noncompetitive points—the former being trade centers, must have had some influence to increase steadily the disparity in growth and prosperity.’

“Among other objections to this system of railway tariff adjustment, made by the Commission in that case, is one of which an illustration is disclosed in the present case, namely, that it gives to railroad managers arbitrary ‘power of determining, within certain limits, what towns shall be trade centers and what their relative advantages.’

“In the case of *Martin v. Chicago, B. & Q. R. Co.* 2 Inters. Com. Rep. 39, 40, 2 I. C. C. Rep. 46, 47, this method of charges was declared to be in conflict with the statute intended to secure relatively equal rates to large and small towns. The Commission, by Chairman Cooley, said:

‘A fatal difficulty with the theory that a trade center, as such, is entitled to specially favorable rates is found in the fact that it is in conflict with the spirit and purpose of the Act to Regulate Commerce. One of the reasons for the passage of the Act was, that by means of rebates and other contrivances, large towns and heavy dealers secured advantages which gave them a practical monopoly of markets and shut out the small towns and small dealers. \* \* \*  
In contemplation of a law which was enacted in the in-

terest of equality as between large and small interests, there can be no unjust discrimination in giving to large and small towns relatively equal rates. It is not a matter of the least importance, in a legal sense, that the small towns are strictly local and noncompetitive. *If, under relatively equal rates they can elevate themselves to the class of jobbing towns, it is their right to do so.*

"In a later case, *Re Atlanta & W. P. R. Co.* 2 Inters. Com. Rep. 463, 464, 470-472, 3 I. C. C. Rep. 24, 25, 46-49, the Commission, in an opinion by Com'r Walker, say :

'It is peculiarly true that long-established usage has here (in the south) created a system of so-called "trade centers" which control the collection and distribution of commodities throughout the territory in their vicinity ; a course of business which has become so firmly grounded that the territory surrounding the local centers is frequently spoken of as "naturally tributary" to them.

'Previous to the passage of the Act to Regulate Commerce it was the universal custom in this (the southern) section of the country to establish rates to certain basic points, subject to fluctuations occasioned by competition and otherwise, while rates to and from all other points were obtained by adding the local charges of the various terminal or initial roads to the rates at the basing points. \* \* \*

'While this method was satisfactory to the centers which it created and maintained, the smaller towns and rural communities protested against a system which worked obviously to their disadvantage.

'The belief has forced itself upon this Commission with increasing strength during the period in which it has observed the operation of various systems of rate making in the southern states and elsewhere, that this system of combined joint and local rates to points in the southern states intermediate to the so-called basing points is in a very great degree responsible for the lack of local development in that region, except at favored localities.'

"In answer to the objection made in that case, as in the case before us, that a reduction in rates to local points so as to make them relatively not higher than the rates to the 'basing points' or 'trade centers' will result in a diminution of the revenue of the roads, it was and is said :

'They say that the railroads must live or there can be no commerce by rail ; and they insist that any reduction of rates



means loss of revenue, which is against the public interest and the carrier's right, unless the rate in question be unreasonable *per se*. But it is not clear that the application of the general rule of the law would involve permanent loss of revenue. The stimulus given to business at intermediate points will increase traffic largely; that proposition has been so often practically demonstrated that no intelligent observer can reject it. \* \* \*

'At present the amount shipped to intermediate points is relatively very small; giving such points the rates charged at more distant places, if adopted and maintained as a general principle, would necessarily encourage local industries and enterprises.'

"The defendants, while asserting that a reduction in rates to local stations will not result in an increase of traffic to those points sufficient to prevent a net loss of revenue, offer no statistics or proof in support of that assertion. The testimony is to the contrary, and so, in our opinion, is the better reason.

"In sections of the country where this system of rate making has not obtained, the prosperity of railroads and communities is believed to be more uniform, if not greater, and it may be fairly assumed that the system is not essential to the prosperity of the roads where, with rates discriminating as between localities so long prevailing, the roads have not been exceptionally prosperous. The prosperity of a road must be more dependent upon the general prosperity of communities along its entire line than upon a few isolated trade centers or favored and widely separated distributing points. Such general prosperity must be largely dependent upon relatively equal or nondiscriminating rates as between communities and rival interests."

If, as defendants claim, competitive conditions, existing among themselves and other members of the Southern Railway & Steamship Association, authorize them to select basing points and distributing centers, and to give them lower or preferential rates, upon what ground are Macon, Americus and Albany so favored, while this advantage is denied to Cordele? It can be and is reached from Nashville over various competing lines formed in connection with two initial and two terminal lines, it has convenient rail communication east, west, north and south, it is less distant by rail from the coast than Americus, Macon and Albany, and is arbitrarily excluded from the advantages given to its rivals and business competitors.

As stated substantially by this Commission in the case heard with this, already cited, the general freight and passenger agent of one of the defendant companies, a witness called by them in support of the higher rates to Cordele, testified that Macon, Americus and Albany were competitive points, and Cordele was not, for the reason that it is not a distributing point to the extent that the other places are; that if competitive forces were allowed to operate at Cordele so as to give it lower rates, its business would increase to some extent and thus make it more of a distributing point. Testimony for complainants is that the increase of business to result from reduced rates would be large. We have, then, this state of case. Cordele is not treated by the defendant roads as a competitive point because it is not a sufficiently large distributing point, and it is not such a distributing point because it is not treated as a competitive point, and the defendants seek to excuse themselves from wrongdoing by offering the results of the wrong in justification. Tried by its results, this system of rate making is at variance with all the equality provisions of the Act to Regulate Commerce, including that which requires all rates to be reasonable and just. It results in rates to Cordele which are unreasonable and unlawful, and which unduly prejudice complainants, and give their more favored business rivals in Macon, Albany and Americus unreasonable advantages.

Answering that their rates to Cordele are rightly made, by a combination of through rates to or from Macon, Albany or Americus with locals thence to Cordele added, and not on a distance basis, the defendants protest that the distance being greater the rates are rightly and properly higher to Cordele than to Macon from Nashville.

In the absence of other influential conditions, distance may be fairly considered a controlling element in fixing reasonable rates, and the distance by the direct line being considerably longer, the rate to Cordele may reasonably be, as defendants claim, higher than to Macon. But the mileage basis, fairly adjusted, which gives to Macon a rate of 19 cents per 100 lbs., applied to Cordele, would reduce its rate to 22 cents.

The distance over the short line is 12 miles in favor of Americus, and strictly on a distance basis, the rate on grain and flour would be one half cent (nearly 6 mills) per 100 lbs. against Cor-

dele; but the short line distance from Nashville is 24 miles in favor of Cordele and 36 in favor of Americus, as against Albany, which has the same rate as Americus. The distance being in favor of Cordele, and neither the cost, the value of the service nor other conditions of transportation being in favor of Albany, Cordele cannot justly be denied at least equal rates with Albany, and any higher rate to Cordele than to Albany and Americus is unreasonable and unduly prejudicial to the complainants.

By way of answer to or in avoidance of complainants' statement to the effect that defendants unlawfully charge more for shorter distances to Cordele than for longer distances to Macon and Americus, they, the defendants, urge that Cordele is not an intermediate point on their line or lines from Nashville to Macon, Albany and Americus respectively, and that over the most direct lines which are or may be formed, the actual mileage to Macon and Americus is less than to Cordele. On the line formed and in use by the defendants and over which they carry grain, flour and other freights from Nashville through Montgomery, Americus and Cordele to Macon, Cordele is an intermediate and shorter distance point to which defendants charge and receive greater compensation for carrying grain and flour than they charge and receive on grain and flour carried over the same line through Cordele to Macon. The same is true as to the line formed and in use, and the charge made for carrying over it, from Nashville by way of Atlanta, Macon and Cordele to Americus. The fact that more direct lines, over which the distance to Macon and Americus, respectively, is less than the distance to Cordele by any lines that may be or are formed and used in transporting grain from Nashville to Macon and to Americus, does not alter or so change the conditions of the transportation as to take it out of the rule of the statute, and make the greater charge for the shorter distance to Cordele lawful. The defendants insist that as the rate from Nashville to Cordele may reasonably be greater than to Macon, which is less distant than Cordele from Nashville by direct line, they may rightfully participate in Macon business over their lines by way of Cordele which may lawfully have a higher rate; and further insist that it is a great hardship to make their participation in Macon business through Cordele dependent upon a reduction of their higher rates to Cordele.

The defendants declare their rates to Cordele, which are half as much more than to Macon, to be no more than is reasonable.

If restraint from participation in the longer distance and, to them, more expensive traffic to Macon through Cordele at such greatly reduced Macon rates, subjects defendants to any disadvantage, the statute provides relief from any such hardship on application to the Commission. In any such application, rates in dispute may be adjusted on a basis of fairness to all interests.

The case being determined on other grounds, we have not deemed it necessary to decide whether the defendants have been guilty of unjust discrimination.

CORDELE MACHINE SHOP V. THE LOUISVILLE &  
NASHVILLE RAILROAD COMPANY AND THE  
SAVANNAH, AMERICUS & MONTGOMERY RAIL-  
WAY COMPANY.

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Decided October 19, 1885.

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1. While carriers operating shorter lines have the advantage, both in making rates and in carrying under them, they cannot dictate a system of charges which the operators of longer lines may not change as to their own roads, though it may be true as a rule, and as claimed by defendants, that, to get business, longer lines must take it as low as rates at the time in force over more direct routes.
2. The fourth section of the Act to Regulate Commerce cuts off any presumption in favor of as great compensation for short as for long distances, and is based on the assumption that ordinarily a higher charge for a shorter distance is discriminating and excessive.
3. The Louisville & Nashville Railroad Company and the Savannah, Americus & Montgomery Railway Company, the defendants, unite in a joint tariff over their lines from Birmingham, Ala., to Cordele, Ga., and connecting at Cordele with the Georgia Southern & Florida Railway Company, the three companies form a line and join in a tariff through to Macon: *Held*, that the two companies first named may lawfully accept less for their haul to Cordele as a part of the through rate to Macon than they might lawfully charge for the haul to Cordele for local delivery; but when the defendants carry a ton of pig iron to Cordele destined to Macon, and receive for their share of the through tariff \$1.45, and when they carry it to Cordele for complainant they charge \$3.69, this charge is exorbitant and unduly prejudicial to complainant.
4. The system of rate making, under which a comparatively few places, arbitrarily selected, are designated competitive points, or basing points, and given preferential rates, while adjacent and less distant points are classed as local and made to pay very much higher rates, is at variance with all the equality provisions of the Act to Regulate Commerce, including that which requires all rates to be reasonable and just. In this case it results in rates to Cordele which are unreasonable and unlawful, prejudicial to complainant, and gives its more favored rivals in Macon, Albany and Americus unreasonable advantages.

## REPORT AND OPINION OF THE COMMISSION.

*MORRISON, Commissioner:*

The Cordele Machine Shop, a corporation under the laws of the state of Georgia, engaged in the foundry and machine shop business at Cordele in that state, complains of the Louisville & Nashville Railroad Company and the Savannah, Americus & Montgomery Railway Company, and alleges that they charge complainant \$3.84 on pig iron, and \$2.30 on coal, per ton, for transportation from Birmingham, Alabama, to Cordele, Georgia, while they, the defendants, in connection with the Georgia Southern & Florida Railroad Company, charge for such transportation from Birmingham to and through Cordele, and thence on 65 miles over the road of the company last above named, to Macon, a lower rate of \$2.00 per ton of pig iron, and \$1.60 per ton of coal; and further, that the rates on these articles from Birmingham to Cordele are "far in excess of the rates from Birmingham to Americus and Albany, Georgia." As a result of these discriminations and differences in rates, the complainant claims that it suffers serious "detriment in its business" and is unable to compete with foundries located in Macon, Americus and Albany. The complainant prays that defendants be required to cease and desist from such violations of the Act to Regulate Commerce, and that it may have such rates on iron and coal as will enable it to compete on equal terms with competitors in Macon, Albany and Americus, and for such other and further order as the Commission may deem necessary.

Neither of the defendants deny that their rates on coal and pig iron to Macon, Americus and Albany are lower than to Cordele, though the Louisville & Nashville R. R. Co. denies that the difference as against Cordele is precisely as stated by complainant, and avers that its rate on pig iron is \$3.62, and not \$3.84, as stated by complainant.

The Savannah, Americus & Montgomery Railway Company, answering separately, says, in justification of its charges, that "the rate on coal to Cordele is based on the rate to Americus;" that it "had nothing to do with the construction of the rate on either coal or pig iron to Macon," and "is powerless to increase the rates to Macon, and, finding them as they exist, finds it not un-

profitable to transport freight under the rates in effect *via* Montgomery and Cordele;" that coal and iron "move to Macon in very large volume, as compared with their movement to Cordele, and no reduction that might be made to Cordele would compensate the carrying company in any increase of tonnage, nor would the revenue derived show anything but a decrease based on a reduction;" that the rates "from points of supply to Macon" are made by "other and shorter routes," and that it would prefer "to abandon the transportation of coal and pig iron to Macon" rather than "impair its revenue" by reducing its rates to "intermediate points" so as to make them conform to the rates to Macon established by "a short line over which it has no control;" and that, if the through rate to Macon *via* Cordele were raised, it would divert the traffic to other routes, and the abandonment or loss of the Macon business would not benefit the complainant, and only result in a decrease of revenue to the road.

The Louisville & Nashville Company answering, denies "that it is under any common control, management, or arrangement with the Savannah, Americus & Montgomery company, for the continuous carriage, shipment or transportation of property between Birmingham and Cordele," and alleges that if coal and iron "originating at Birmingham" are hauled by the Savannah, Americus & Montgomery road through Cordele, and thence over the Georgia Southern & Florida road to Macon, "such transportation by such indirect route has no bearing upon the adjustment of rates to Macon;" that the rates to Macon were in effect prior to the construction of the Savannah, Americus & Montgomery road from Montgomery to a connection with the Georgia Southern & Florida road, and if said Savannah, Americus & Montgomery road is in condition to compete at all for traffic destined to Macon, originating at Birmingham, it must do so at rates at least not higher than those which are in effect by the shorter and more direct routes, and which rates were established before the completion of said Savannah, Americus & Montgomery road. It also denies that "the differences shown to exist between the rates to Macon and those to Cordele are evidences of any unjust discrimination in freight rates as against Cordele, or that they can be of any serious detriment to the business of complainant, or that they prohibit competition (by complainant) in the

foundry business with foundries located in Macon, Albany or Americus."

In a supplemental paper in the nature of a replication, filed after the answers, the complainant states that it "does not ask for an adjustment of rates to Macon, but does ask an adjustment of rates to Cordele."

#### FACTS.

1. The lines of the Louisville & Nashville Railroad Company and the Savannah, Americus & Montgomery Railway Company connect at Montgomery and form a line from Birmingham through Montgomery to Americus, to Cordele and to Albany, over which coal and pig iron are transported from Birmingham to Americus, Cordele and Albany respectively, under joint through rates.

Cordele is located 30 miles east of Americus, at the intersection of the Savannah, Americus & Montgomery with the Georgia Southern & Florida road, and a branch line of the Savannah, Americus & Montgomery Railway Company extends from Cordele 35 miles southeast to Albany. Macon is 65 miles north of Cordele by the Georgia Southern & Florida road.

The distances over the most direct or short lines, from Birmingham to Macon, Americus, Cordele and Albany, are as follows:

#### THE SHORT LINES.

<i>From Birmingham.</i>	<i>Miles.</i>
To Macon, <i>via</i> Atlanta, over Georgia Pacific and East Tenn., Va. & Ga. roads .....	255
" Americus, over Central R. R. of Georgia, <i>via</i> Opelika and Columbus .....	222
" Cordele, over Central R. R. of Georgia and Savannah, Americus & Montgomery road, <i>via</i> Opelika, Columbus and Americus .....	252
" Albany, over Central R. R. of Georgia, <i>via</i> Opelika, Columbus and Americus .....	258
The distances over the lines of the companies complained of are:	

<i>From Birmingham.</i>	<i>Miles.</i>
To Cordele, <i>via</i> Montgomery, over the Louisville & Nashville and Savannah, Americus & Montgomery roads .....	267
" Americus, <i>via</i> Montgomery, over the Louisville & Nashville and Savannah, Americus & Montgomery roads..	237



To Albany, *via* Montgomery, over the Louisville & Nashville and Savannah, Americus & Montgomery roads . . 302  
 “ Macon, *via* Montgomery and Cordele, over the above-named roads to Cordele, and thence over the Georgia Southern & Florida road . . . . . 332

A number of other lines than those above-named may be formed by other combinations of roads with the three initial lines, over which freight may be hauled from Birmingham to Macon, Cordele, Americus and Albany.

2. After the complaint and answers were filed, some changes were made in the rates which had been in force on coal and pig iron from Birmingham to Macon, Americus, Albany and Cordele, and which were complained against. The rates so established and readjusted, as appears from the tariff sheets of the Southern Railway & Steamship Association and of the three initial carriers from Birmingham, namely, the Louisville & Nashville, the Central R. R. of Georgia and the Georgia Pacific companies, are as shown below :

Rates in cents per ton.*			
From Birmingham.	Coal.		Pig Iron.
	Domestic.	Steam.	
To			
Macon,	190	160	180
Americus,	190	160	290
Albany,	190	160	290
Cordele, <i>via</i> L. & N. } R. R. }	260	230	369
Cordele, <i>via</i> Cent. R. } R. of Ga. }	230	230	369
Cordele, <i>via</i> Georgia } Pacific R. R. }	265	230	369

\*Coal ton *via* L. & N. R. R., 2240 lbs. ; *via* Central of Georgia and Georgia Pacific, 2000 lbs. Pig iron ton by all, 2268 lbs.

These readjusted rates on pig iron and coal applied to and were the same over all routes and lines from Birmingham to Macon, Americus, Albany and Cordele, with the exceptions as to domestic coal shown in the above table ; they so remained in force until afterwards, when the Louisville & Nashville R. R. Co. on August 10, 1895, established a rate of \$1.60 per ton of coal, both domestic and steam, from Birmingham to Americus, Albany and Macon,

and a rate of \$1.90 from Birmingham to Cordele. Five days later, August 15, 1895, the Central R. R. of Georgia, the short line, reduced its Cordele rate to \$1.90 per ton on both domestic and steam coal, and still maintains its rate of \$1.90 on domestic and \$1.60 on steam coal to Americus, Macon and Albany.

The rates on pig iron from Birmingham to Savannah and other southeastern Atlantic ports over defendants' and other lines are the same as to Americus and Albany, \$2.90 per ton.

Of the rate, \$3.69 per ton, on pig iron from Birmingham to Cordele, divided or apportioned on the basis of mileage or length of haul, the Louisville & Nashville R. R. Co. receives for its haul of 96 miles, \$1.28, and the Savannah, Americus & Montgomery R. Co., for its haul of 171 miles, \$2.41.

On Birmingham and Macon business, of the rate of \$1.80 on pig iron, the Louisville & Nashville R. Co. receives for its 96 miles haul to Montgomery 53 cents, and the Savannah, Americus & Montgomery R. Co. for its 171 miles thence to Cordele 92 cents; for the haul thence 65 miles to Macon, the Georgia Southern & Florida R. R. Co. receives 35 cents.

The local rates on pig iron per ton are :

From Birmingham to Montgomery .....	\$1.50
“ Montgomery to Americus .....	2.64
“ Americus to Cordele .....	1.50
“ Cordele to Macon	} .....
“ or	
“ Macon to Cordele	
	1.89

3. The following are the short lines from the South Atlantic ports, Savannah, Brunswick and Jacksonville, respectively, to Cordele, Albany, Americus and Macon :

*From Savannah.*

TO	SHORT LINES.	MILES.
Cordele.	<i>Via</i> Lyons, over the Central of Georgia and the Savannah, Americus & Montgomery .....	169
Albany.	<i>Via</i> Lyons and Cordele, over the above-named roads .....	204
Americus.	<i>Via</i> Lyons and Cordele, over the above-named roads .....	199
Macon.	<i>Via</i> Millers, over Central R. R. of Ga. ....	191

*From Brunswick.*

TO	SHORT LINES.	MILES.
Cordele.	<i>Via</i> Helena, over Southern Railway and Savannah, Americus & Montgomery road.....	167
Albany.	Over the Brunswick & Western R. R.....	171
Americus.	<i>Via</i> Helena and Cordele, over the Southern Railway and Savannah, Americus & Montgomery .....	198
Macon.	Over Southern Railway.....	190

*From Jacksonville.*

TO	SHORT LINES.	MILES.
Cordele.	<i>Via</i> Waycross and Tifton, over the Savannah, Florida & Western, the Brunswick & Western, and the Georgia Southern & Florida roads .....	186
Albany.	<i>Via</i> Waycross, over the Savannah, Florida & Western, and the Brunswick & Western roads .....	187
Americus.	<i>Via</i> Waycross, Tifton and Cordele, over the Savannah, Florida & Western, the Brunswick & Western, the Georgia Southern & Florida and the Savannah, Americus & Montgomery roads .....	216
Macon.	<i>Via</i> Everett, over the Florida Central & Peninsula, and the Southern Railway.....	252

The Class Rates in cents per 100 lbs. from Savannah, Brunswick and Jacksonville to Macon, Americus, Cordele and Albany, are given in the table below:

## CLASS FREIGHT RATES.

GOVERNED BY S. R. &amp; S. S. ASSO. CLASSIFICATION.

		RATES IN CENTS PER 100 LBS.												PER BBL.
		1	2	3	4	5	6	A	B	C	D	E	H	F
To	<i>From Savannah, Ga.</i>													
Macon,	Ga.	64	56	48	40	34	30	18	27	16	15	32	40	33
Americus,	"	69	63	51	43	35	33	20	28	20	19	38	40	40
Cordele,	"	94	82	74	63	49	39	37	37	19	17	49	63	37½
Albany,	"	64	56	48	40	34	29	18	27	15	14	32	40	31

To		<i>From Brunswick, Ga.</i>												
Macon,	Ga.	64	56	48	40	34	30	18	27	16	15	32	40	33
Americus,	"	69	63	51	43	35	33	20	28	20	19	38	40	40
Cordele,	"	94	82	74	63	49	39	37	37	19	17	49	63	37½
Albany,	"	64	56	48	40	34	29	18	27	15	14	32	40	31

To		<i>From Jacksonville, Florida.</i>												
Macon,	Ga.	64	51	48	40	34	32	18	27	16	15	32	40	33
Americus,	"	69	63	51	43	35	33	20	28	21	20	38	48	42
Cordele,	"	98	84	75	61	48	39							
Albany,	"	79	67	58	46	37	31	31	29	15	14	37	46	31

4. The rates to Macon, Americus, Cordele and Albany, both east and west as well as from the north, are regulated by the Southern Railway & Steamship Association, of which the defendants are members. Through this Association, places are recognized and treated as local or noncompetitive points or stations, or as competitive or basing points. Places classed or described as competitive or basing points are given through rates made up of reduced local rates, while to points called local or noncompetitive, rates are made up of a combination of the through rate to a nearby basing station with the local rate,—thence to the local station, using for this purpose the combination making the lowest aggregate. This system of rate making, known or designated as the "basing points" or "trade center system," prevails in the Southern Railway & Steamship Association territory, and in making the total through rate under this system to Cordele, it is classed as a local or noncompeting point, and a different rule is adopted from that applied in making the through rate to Macon, Americus and Albany, which are classed as basing and competing points. For illustration,—on a shipment of coal from Birmingham, under this rule, the rate to Cordele is the through rate to Americus, treated as a basing or competing point, with the local rate from Americus to Cordele added, while the through rate to Albany is the same as to Americus, though the freight passes through Americus and Cordele to Albany which is recognized as a competitive point. On a shipment of pig iron from Birmingham, the rate to Cordele, \$3.69, is made up of the through rate, \$1.80, to Macon, with the local rate from Macon to Cordele, \$1.89, added, whether the freight is carried to and through Macon to Cordele, or reaches Cordele by the route over which Cordele is less distant from Birmingham than

is Macon by any route. The local rates far exceed per mile the through rates to the basing points. For instance, the rate per ton per mile on iron from Birmingham through to Macon over the short line *via* Atlanta, 255 miles, is 7 mills, while under the local rate for the haul of 65 miles on to Cordele it is 29 mills, more than four times greater per mile for the last 65 miles of the through haul. The defendants claim to justify this difference in the method of constructing rates on the alleged ground that to Albany, Americus and Macon the rates are competitive, and that to Cordele they are not. This system of rate making to Cordele results, as appears from the foregoing tables, in through rates to Cordele from east, west and north, very much higher, in the aggregate, than to Macon, Americus and Albany, and as well when Cordele is the shorter as when it is the longer distance point. Cordele, by the short line from Birmingham, is 3 miles less distant than Macon; the rate on pig iron to Cordele is \$1.89 higher than to Macon; the short line distance from Birmingham to Cordele is 6 miles less than to Albany; the rate on pig iron to Cordele is 79 cents more than to Albany. The foregoing tables of rates and short line distances illustrate the inequality resulting from the "basing point" system, in the rates to Cordele treated as a local noncompeting point, and Macon, Americus and Albany treated as basing and competing points. This system is not, in every instance, adhered to, as appears from the defendants' recent reduction of the coal rate to Cordele to less than any combination of the through and local rates.

The competition in transportation to Macon, Americus and Albany, which, it is claimed, distinguishes them as "competitive points," is competition between rail lines. The lines from Birmingham formed by the Central of Georgia and by the Georgia Pacific roads as the initial carriers, as well as the lines formed by the Louisville & Nashville as the initial carrier, do or may compete in the transportation of traffic of all kinds to Cordele as well as to Macon, Americus and Albany.

5. Cordele is not so large as the much older cities, Americus, Albany and Macon; its tonnage of coal and pig iron is small in comparison with theirs; its relatively unequal rates detract from its business and from its demand for commodities. It has grown up since the building of the Savannah, Americus & Montgomery

Railway. In April, 1893, four years after its incorporation, it had a population of about 2500; it had a cotton mill and two saw mills in operation, another ready for work, two in process of construction, and a number of others in the vicinity. The bulk of work done by complainant is the repairing of saw mill machinery. In this and in the general foundry business coal and pig iron are used, and Macon foundries have unfair advantage of complainant by reason of the much lower rates to that city from the common point of supply (Birmingham). There are also foundries at Americus and Albany with which the "Cordele Machine Shop" comes in competition at some disadvantage, under existing rates.

6. It does not appear that coal and pig iron are extensively shipped from Birmingham to Macon by the Louisville & Nashville and Savannah, Americus & Montgomery roads to Cordele, and thence over the Georgia Southern & Florida road, which is not the short route. It is open to all shippers. When shipments are made by this route they take the regular rates set forth above, which apply on all lines from Birmingham to Macon.

#### CONCLUSIONS.

The intentment or meaning of the complaint in this case is, that the defendants' rate of charges for hauling iron and coal from Birmingham, Alabama, to Cordele, Georgia, are unreasonable and unlawful; that they are very much higher to Cordele than to Macon, Albany and Americus; and that the defendants, by making and maintaining them, unjustly discriminate against and unlawfully subject the complainant, in respect to its business, to undue disadvantage.

The questions raised by answer of defendants, as to when and by what authority or agency these rates, or any of them, were first established, can hardly effect, or be material in determining their present legality. In defense of their rates the defendants claim that their line through Montgomery, Americus and Cordele, thence over the line of the Georgia Southern & Florida R. Co., is not the short route from Birmingham to Macon; that where, as the fact is in respect to Birmingham and Macon, there are a number of transportation lines competing for business be-

tween two places, the short line makes the rate, and to share in such business longer lines must accept a rate at least not higher than the rate in force over the more direct route; and that finding the Macon rates in force and not unprofitable to share in, the defendants, on the completion of their line to Cordele, had participated in carrying, and were offering to carry, Birmingham coal and iron to Macon at the rates so established by other lines.

Conceding all that is here claimed, it can have no controlling effect upon the matter in controversy. It is not the Macon rate but the reasonableness of the rates to Cordele, both of themselves and in their relation to rates on like freight to Macon, Albany and Americus, that are challenged in this proceeding.

Witnesses of much railroad experience testified, in behalf of the defendants, that all these rates are made by or as the result of competitive conditions, that the short line makes the rates, and that all these rates are made by the Southern Railway & Steamship Association.

The rates, through whatever agency made, are the rates of the carriers establishing and carrying, or offering to carry under them. Distance is an element so important in fixing the cost of transportation as to afford rival carriers having shorter lines great advantage in determining or dictating what the rate shall be, as well as in carrying under it after it shall be established. Time also is an element entering into the value and cost of transportation; and as it is to the interest of shippers to get their goods to destination speedily and inexpensively, it is no doubt true, as a rule, and as claimed by defendants, that to get business, longer lines must take it as low, if not lower, than the rates at the time in force over more direct routes. While it is true that operators over shorter lines have the advantage both in establishing rates and carrying under them, this advantage does not enable such operators to dictate rates or a system of charges which the owners or operators of other lines may not change, alter or reduce as to their own roads. This is shown in the reduction made by defendants, August 5, 1895, in the coal rate to Cordele complained of, which reduction was followed five days later by the shorter line.

It is not claimed that the transportation service is more expensive for carrying coal and iron from Birmingham to Cordele than to Macon, Albany or Americus, or that the service rendered

in delivering such coal and iron is more valuable to complainant than is the service rendered in delivering coal and iron to the complainant's business competitors in Macon, Americus and Albany. The defendants deny any violation of law in respect to their rates, and without affirming their legality in terms, do, in effect, declare their Cordele rates to be reasonable and lawful, and their Macon and Albany rates to be less than a reasonable and fair compensation for the service, and that because of competitive conditions they must accept these lower rates to get a share of the lower rate business to Macon and Albany. If this business is desirable and profitable when carried through Cordele to those more distant places, we may fairly assume, under the circumstances of this case, that any higher rate to Cordele would be excessive. The fourth section, or "long and short haul" provision of the statute cuts off any presumption in favor of even as great compensation for short as for longer distances and is based on the assumption that ordinarily a higher charge for a shorter distance is discriminating and excessive.

The short line rule insisted upon in the testimony for defense, if applied in this case, would give Cordele at least as low rates as Macon and Albany, the distance being 3 miles as to one and 6 as to the other, in favor of Cordele.

When they carry a ton of iron from Birmingham to Cordele the defendants receive for that service \$1.45, if the iron is destined for Macon. If it is carried to Cordele for complainant they charge him \$3.69, or \$2.24 more for the same haul. They will haul it through Cordele to Albany, 35 miles, or to the sea, 169 miles more distant than Cordele, for very much less than the Cordele rate. Similar inequalities in the defendant's rates on coal are shown to exist, though the difference as against the complainant is not so great on coal as on iron. When these products are carried through Americus to Cordele, as well since as before the recent reduction as to coal, the rate both in the aggregate and per mile for the last 30 miles of the through haul is largely increased. When carried through Americus, and thence to and through Cordele to Macon or to Albany, the aggregate rate on iron to Macon and the rate per mile on both products are largely reduced, while the aggregate on both to Albany remains the same as to Americus.



That the defendants may lawfully accept less for their haul to Cordele, as their part of a through rate to Macon, than they might lawfully charge for local delivery at Cordele, is conceded, but from the differences and discriminations actually made, the charges exacted from the complainants appear on inspection and at first view, and after examination, to be exorbitant and unduly prejudicial to the complainant.

In our view of the matter substantially the only justification the defendants offer for the charges in dispute is found in the so-called "basing point" or "trade center" system of rate making, illustrated in number 4 of "Facts."

This system very generally prevails in the territory over which the Southern Railway & Steamship Association assumes jurisdiction in the matter of fixing and adjusting rates to points in such territory designated basing or competing points. Its prevalence was and is claimed to be the outgrowth of competitive conditions and was brought to the attention of this Commission soon after its organization when the Commission said in *Re Louisville & N. R. Co.* 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31, opinion by Chairman Cooley:

"The pre-eminence of trade centers in the territory reached by the petitioner's road is peculiar and has probably been increased by the concessions in rates which the railroads have made to them, while making less concessions or none at all to less important stations. This condition of affairs tends to perpetuate itself, and the disparity of rates as between competitive and noncompetitive points—the former being the trade centers, must have had some influence to increase steadily the disparity in growth and prosperity."

Among other objections to this system of railway tariff adjustment made by the Commission in that case is one of which an illustration is disclosed in the present case, namely,—that it gives to railroad managers arbitrary "power of determining within certain limits what towns shall be trade centers and what their relative advantages."

In the case of *Martin v. Chicago, B. & Q. R. Co.* 2 Inters. Com. Rep. 39, 40, 2 I. C. C. Rep. 46, 47, this method of charges was declared to be in conflict with the statute intended to secure relatively equal rates to large and small towns. The Commission, by Chairman Cooley, said:

"A fatal difficulty with the theory that a trade center, as such, is entitled to specially favorable rates, is found in the fact that it is in conflict with the spirit and purpose of the Act to Regulate Commerce. One of the reasons for the passage of the Act was, that by means of rebates and other contrivances, large towns and heavy dealers secured advantages which gave them a practical monopoly of markets and shut out the small towns and small dealers. \* \* \* In contemplation of a law which was enacted in the interest of equality as between large and small interests, there can be no unjust discrimination in giving to large and small towns relatively equal rates. It is not a matter of the least importance, in a legal sense, that the small towns are strictly local and noncompetitive. *If, under relatively equal rates, they can elevate themselves to the class of jobbing towns, it is their right to do so.*"

In a later case, *Re Atlanta & W. P. R. Co.* 2 Inters. Com. Rep. 463, 464, 470-472, 3 I. C. C. Rep. 24, 25, 46-49, the Commission, in an opinion by Com'r. Walker, say:

"It is peculiarly true that long established usage has here (in the south) created a system of so-called 'trade centers' which control the collection and distribution of commodities throughout the territory in their vicinity; a course of business which has become so firmly grounded that the territory surrounding the local centers is frequently spoken of as 'naturally tributary' to them."

"Previous to the passage of the Act to Regulate Commerce it was the universal custom in this (the southern) section of the country to establish rates to certain basic points, subject to fluctuations occasioned by competition and otherwise, while rates to and from all other points were obtained by adding the local charges of the various terminal or initial roads to the rates at the basing points." \* \* \* \* \*

"While this method was satisfactory to the centers which it created and maintained, the smaller towns and rural communities protested against a system which worked obviously to their disadvantage."

"The belief has forced itself upon this Commission with increasing strength during the period in which it has observed the operation of various systems of rate making in the southern states and elsewhere, that this system of combined joint and local rates to points in the southern states intermediate to the so-called basing points is in a very great degree responsible for the lack of local development in that region, except at favored localities."

In answer to the objection made in that case, as in the case before us, that a reduction in rates to local points so as to make them

relatively not higher than the rates to the "basing points" or "trade centers," will result in a diminution of the revenue of the roads, it was and is said :

"They say that the railroads must live or there can be no commerce by rail ; and they insist that any reduction of rates means loss of revenue, which is against the public interest and the carrier's right, unless the rate in question be unreasonable *per se*. But it is not clear that the application of the general rule of the law would involve permanent loss of revenue. The stimulus given to business at intermediate points will increase traffic largely. That proposition has been so often practically demonstrated that no intelligent observer can reject it." \* \*

"At present the amount shipped to intermediate points is relatively very small ; giving such points the rates charged at more distant places, if adopted and maintained as a general principle, would necessarily encourage local industries and enterprises."

The defendants, while asserting that a reduction in rates to local stations will not result in an increase of traffic to those points sufficient to prevent a net loss of revenue, offer no statistics or proof in support of that assertion. The testimony is to the contrary, and so, in our opinion, is the better reason.

In sections of the country where this system of rate making has not obtained, the prosperity of railroads and communities is believed to be more uniform, if not greater, and it may be fairly assumed that the system is not essential to the prosperity of the roads where, with rates discriminating as between localities so long prevailing, the roads have not been exceptionally prosperous. The prosperity of a road must be more dependent upon the general prosperity of communities along its entire line than upon a few isolated trade centers or favored and widely separated distributing points. Such general prosperity must be largely dependent upon relatively equal or nondiscriminating rates as between communities and rival interests.

As already stated and shown, the lower rates from Birmingham to Macon, Albany and Americus than to Cordele, are not based on distance or length of haul, or on the cost or value of the service ; and so far as these lower charges are or have been fixed by competition, it was and is competition of railroad companies, members of the Southern Railway & Steamship Association.

Cordele has railroad connection north, south, east and west ; it

can be and is reached from Birmingham by lines of three initial carriers and their connections. It is accessible and less distant from the coast by rail than Americus, Albany and Macon, but is arbitrarily denied a place in the favored list of competitive points. The manipulators of the competitive or basing point system which excludes it arbitrarily, select favorites, and again arbitrarily apportion to each the measure of its unreasonable advantage. Macon, Americus and Albany are classed together as basing and competing points, and favored with the same rates on coal, while Albany and Americus are required to pay a rate largely in excess of that paid by Macon on iron,—both the coal and iron coming from Birmingham.

The general freight and passenger agent of one of the defendant companies, a witness called by them in support of the higher rates to Cordele, testified that Macon, Americus and Albany were competitive points, and Cordele was not, for the reason that it is not a distributing point to the extent that the other places are,—that if competitive forces were allowed to operate at Cordele so as to give it lower rates, its business would increase to some extent and thus make it more of a distributing point. Testimony for complainant is that the increase of business to result from reduced rates would be large. We have, then, this state of case. Cordele is not treated by the defendant roads as a competitive point because it is not a sufficiently large distributing point, and it is not such a distributing point because it is not treated as a competitive point, and the roads seek to excuse themselves from wrong doing by offering the results of the wrong in justification. Tried by its results this system of rate making is at variance with all the equality provisions of the Act to Regulate Commerce, including that which requires all rates to be reasonable and just. In this case, it results in rates to Cordele which are unreasonable and unlawful, and which unduly prejudice complainant, and give its more favored business rivals in Macon, Albany and Americus unreasonable advantage. The short line distance is in favor of Americus, but any higher rate to Cordele than to Albany or Macon on pig iron or coal from Birmingham is unreasonable and unlawful, and should be reduced to \$1.60 on coal and \$1.80 on pig iron.

The higher rate to Americus and Albany than to Macon on pig

iron is not complained of in this proceeding, but it is expected that the carriers will adjust these rates in conformity with the findings in this case, and avoid further necessary proceedings to that end.

The case being disposed of under other provisions of the statute, we have not deemed it necessary to determine whether the second and fourth sections of the Act to Regulate Commerce have also been violated.

THE INDEPENDENT REFINERS' ASSOCIATION OF TITUSVILLE, PENNSYLVANIA, AND THE INDEPENDENT REFINERS' ASSOCIATION OF OIL CITY, PENNSYLVANIA, V. THE WESTERN NEW YORK & PENNSYLVANIA RAILROAD COMPANY; THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY; THE DELAWARE & HUDSON CANAL COMPANY; THE FITCHBURG RAILROAD COMPANY; AND THE BOSTON & MAINE RAILROAD COMPANY.

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THE INDEPENDENT REFINERS' ASSOCIATION OF TITUSVILLE, PENNSYLVANIA, AND THE INDEPENDENT REFINERS' ASSOCIATION OF OIL CITY, PENNSYLVANIA, V. THE WESTERN NEW YORK & PENNSYLVANIA RAILROAD COMPANY; THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY; AND THE LEHIGH VALLEY RAILROAD COMPANY.

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#### IN THE MATTER OF REPARATION.

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1. On failure of the defendant common carriers to cease charging for the transportation over their respective roads of barrel packages containing oil shipped from points in Western Pennsylvania to New York Harbor points and Boston and Boston points, or, as an alternative, promptly furnish tank cars to shippers of oil between said points, and to file and publish tariffs accordingly, and to make reparation to injured parties legally entitled thereto, by refunding all sums received for carrying barrel packages containing oil shipped between said points when the use of tank cars for such shipments had not been open to shippers impartially, and shippers had been thereby deprived of their use, all of which was required of defendants by order entered in these cases on November 14, 1892, and upon the filing of itemized claims for reparation, due hearing of the claimants and defendants, and full investigation of the matters involved:  
*Held*, that the claims for reparation served upon defendant initial carriers by claimants, according to a stipulation entered into by the parties, are the claims to be considered in these cases. That the parties legally entitled to reparation under said order of November 14, 1892, are oil shippers from Titusville, Oil City and vicinity who were members of the complaining associations at the time the complaints were filed, or subsequently, up to the date of the hearing at Titusville on May 15, 1894. That the time which the claims herein may properly cover is from September 2, 1892,

when the practice of charging for carrying barrels containing oil was commenced by defendants, to May 15, 1894, when hearing on the claims was had. That the shipments as to which reparation should be made are those from Titusville, Oil City or vicinity to New York or New York Harbor points, or Boston or points taking the Boston rate, that passed over routes in which some one of the defendants was the carrier receiving the freight for transportation, initiating and controlling the method or mode of carriage and billing the freight through to destination at the aggregate rates of compensation charged. That the amount to be refunded is the charge collected by defendants for the transportation of barrels containing petroleum oil shipped and carried as aforesaid. That the defendants are severally liable for the full amount of damages proved in these cases to result from violations in which they or either of them participated.

2. The specific provision in the law for individual liability of carriers for the full amount of damages sustained through enforced payment of excessive transportation charges or other practices condemned in the statute, makes it unnecessary that all the carriers over any particular route shall be before the Commission to enable it to direct reparation for wrongs which have been inflicted upon shippers under any such charge or practice.
3. Receivers of railroad companies are common carriers subject to the prohibitions and requirements of, and to regulation under, the Act to Regulate Commerce.
4. Where connecting carriers make a through route and establish through rates which apply as single charges for the whole service, they hold themselves out as carriers over such route at such rates, and must be prepared to furnish suitable "instrumentalities of shipment and carriage," so that the transportation may be conducted without wrong or injustice to those who desire to use the through line.
5. The mere circumstance that the Boston & Maine received a share of the total through charge which was equal to its individually established rate from Boston to the points of destination, is altogether insufficient to make these shipments take on a purely local character over the Boston & Maine; and if the shipments were not, in all essential respects, local from Boston to the destination points, then they were through shipments over the through line of the connecting carriers, and must be so treated.
6. It appearing that the wrongs found to exist in these cases resulted from unequal conditions of carriage and shipment imposed by the defendants antecedent to the time of shipment, that the movement of the property depended upon the shipper's acceptance of conditions thus notified to him in advance, that he had to regulate his price for oil accordingly, and that the cost of transportation was borne by the claiming shippers:  
*Held*, that it is not material whether the claimants, who are all shippers, or whether the consignees, paid the transportation charges.  
*Held*, further, that the violations of law found in these cases do not arise through any breach of contract, but from failure on the part of carriers to perform their public duties.
7. The Lehigh Valley Railroad Company, a common carrier subject to the provisions of the Act to Regulate Commerce, could not, by leasing its road,

free itself from liabilities for practices made illegal by that statute; nor, after resuming operation of its property, pending proceedings against it to enforce statutory provisions so violated, and to recover damages for injuries sustained under such violations, can it claim exemption from liability during the time of the lease.

8. Shippers whose claims may be covered by the order entered herein on November 14, 1892, but which have not been served in these reparation proceedings, are, upon failure of defendants to make proper refund of excessive charges, entitled to proceed, upon the basis of reparation prescribed in said order, to enforce their claims in the courts as provided by law.

(Nos. 153, 154.)

*M. J. Heywang*, for complainants.

*Frank Rumsey*, for Western New York & P. R. Co. and S.

G. DeCoursey, Receiver.

*H. Schoonmaker*, for New York, L. E. & W. R. Co. and J.

G. McCullough and E. B. Thomas, Receivers.

*David Willcox*, for Delaware & H. Canal Co.

*George A. Torrey*, for Fitchburg R. Co.

*Sigourney Butler*, for Boston & M. R. Co.

*Francis I. Gowen*, for Lehigh Valley R. Co.

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REPORT, OPINION AND ORDERS OF THE COMMISSION.

BY THE COMMISSION :

Upon a report and opinion filed and by order entered herein on Nov. 14, 1892, the defendants in the above-entitled cases were required, among other things, as follows :

To "cease and desist from charging or collecting any rate or sum for the transportation of the barrel package on shipments of oil in barrels over their respective roads or lines from the oil regions of Western Pennsylvania to New York and New York Harbor points, or to Boston and Boston points ; or, on reasonable notice, promptly furnish tank cars to complainants and other shippers who may apply therefor for the purpose of loading and shipping oil therein to such New York harbor and Boston points as said shippers may direct ; and that, on or before the 9th day of January, 1893, said defendants notify the public accordingly by publication in their tariffs of rates and charges, pursuant to the provisions of section 6 of the Act to Regulate Commerce, and also file copies of said tariffs with this Commission as required by the provisions of said section.



"And said defendants are further hereby directed and required to refund to the several parties legally entitled thereto, within 60 days after notice of this decision and demand thereof by such parties, all sums received by them for the transportation over their respective roads or lines of the barrel package on shipments of oil in barrels, when the use of tank cars has not been open to shippers impartially and the shipper claiming reparation has been thereby deprived of their use; and inasmuch as the amounts wrongfully received from complainants and others who may be entitled to such reparation cannot be ascertained from the evidence already taken, these proceedings will be continued for such further action or inquiry in that behalf as may become necessary."

The above-mentioned portion of said order has not been complied with by the defendants in these cases in any respect. Upon application of counsel for various claimants seeking reparation under the order, a hearing to ascertain "what amounts have been wrongfully received from complainants and others who may be entitled to such reparation" was held at Titusville, Pa., on May 15 and 16, 1894. Proof was then submitted by claimants as to their respective demands, but as copies of the claims presented had not been served upon the defendant carriers, a stipulation was entered into between counsel for claimants and counsel representing the several defendants in this respect, to the effect that the claimants should serve copies of their claims upon the initial carriers, and that thereupon such carriers and the connecting carriers in the several routes would examine and check the various items set forth in the claims and afterwards file the same, together with statements, with the Commission. This operated to delay the proceeding until the terms of the stipulation should be carried out or until the Commission should enter some further order limiting the time of the parties to conform to such agreement. Considerable delay resulted from the failure of claimants to promptly serve copies of their claims, and the carriers also evinced no disposition to hurry this matter of reparation to a close. This continued until June 10, 1895, when the Commission issued an order directing the carriers to complete their examination of claims served under the agreement and file the same with statements thereon, not later than June 25, 1895. This time was extended by subsequent order, applied for by the Lehigh Valley Railroad

Co., until July 15, 1895. The claims which were served upon defendant initial carriers by claimants, the originals or duplicates thereof now being on file in these cases, are the claims to be considered in this report.

These matters have been regularly heard and the defendant carriers have had full notice and ample opportunity to examine and oppose the claims.

The defendants have not, as required by our order of Nov. 14, 1892, notified the public by filing and posting oil tariffs, that they or either of them would supply shippers with tank cars for oil transportation to New York harbor or Boston points. Such cars are not and have not been open to the use of shippers generally on any of the defendant roads. On the contrary, before and since the complaints were filed in these cases, it has been the practice of the defendants to hire tank cars of owning shippers by paying mileage thereon, while at the same time denying other and competing shippers the right to use such cars, and compelling them to ship their oil in barrels and pay transportation charges on the weight of the barrel.

The parties legally entitled to reparation at the hands of the defendants under our order of Nov. 14, 1892, are oil shippers from Titusville, Oil City, or points in the vicinity thereof, who were members of the complaining associations at the time the complaints were filed, or subsequently, up to the date of the hearing of these reparation matters at Titusville on May 15, 1894.

The time which will be considered as properly covered by claims for reparation in these cases is from September 3, 1888, the date when the practice of charging for carrying barrels containing oil was commenced, to May 15, 1894, when hearing on the claims was had.

The shipments which may be included in the claims are those from Titusville, Oil City and vicinity to New York and New York harbor points and Boston and points taking Boston rates, and which passed over routes in which some one of the defendants was the carrier receiving the freight for transportation, initiating and controlling the method or mode of carriage, and billing the freight through to destination at the aggregate rates of compensation charged.

The amount to be refunded is the charge collected by defend-

ants for the transportation of barrels containing petroleum oil shipped and carried as aforesaid, and where this barrel charge has not been exactly figured and reported by the defendant initial carrier, such charge will, as found in our Report and Opinion of November 14, 1892, be 14 cents per barrel to New York harbor points and 20 cents per barrel to Boston and Boston points, except where a lower charge per barrel is demanded in said claims.

The question of liability for the wrongs found to have been done to shippers demands more extended notice.

The conduct of the carriers, as shown in these cases, was in plain violation of rules for equal treatment prescribed in the law. Mere statement of the carrier's practices is sufficient to demonstrate that the conditions thus arbitrarily imposed upon shippers who did not own tank cars resulted in placing such shippers at a palpable disadvantage, and brought about undue preference to favored competing shippers. The carriers, by hiring shippers' cars, each paying rental based upon mileage run over their roads, and by confining such cars to the owning shippers' use, gave such shippers an enormous business advantage. Precisely the same unjust discrimination was practiced against shippers thus obliged to send oil only in barrels and pay charges on the weight of the barrel, as would have been enforced if the carriers had hired or purchased tank cars from outside parties and limited their use to some shippers, thereby compelling other and competing shippers to ship oil in barrels and pay for the transportation of the barrel or not ship oil at all. In our investigation and decision in these cases we did not inquire or determine whether the mileage paid to the owning shippers was an excessive rental, and consequently an additional advantage to such shippers; the order awarding reparation due to injured parties was based solely upon the fact that barrel charges were exacted from shippers of oil by that method, while the defendants denied such shippers the use of tank cars which was freely granted by them to other shippers in the same business. It matters not how the custom grew up, nor what were the business reasons which induced the carriers to establish the practice; they were subject to provisions of law which plainly made their action unlawful.

The eighth section of the Act specifies the degree of liability :  
 " That in case any common carrier subject to the provisions of

this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case." The defendants are severally liable for damages resulting from any violations found in these cases in which they or either of them participated.

It is true that to enforce required changes in published tariffs or rate sheets, the order should be directed against all the carriers which participate in the transportation between points affected by the rates; but where, as in these cases, the law specifically provides for the individual liability of any carrier concerned for the full amount of damages sustained through enforced payment of excessive transportation charges or other practices made unlawful by the statute, it is not necessary to have all the carriers over any particular route before the Commission to enable it to direct reparation for wrongs which have been inflicted upon shippers under any such charges or practices.

The sums received by the defendants for the transportation of the barrel package containing oil over their respective roads or lines must, under the law, be held to be the full amounts paid for carrying the barrel package between the points of shipment and destination. By what carrier over any of these lines the excessive charge was received, or how it was divided, cannot augment or diminish the several liability of the defendants for the whole damage.

The above quoted provision of the eighth section is broad enough to charge each of the defendants with liability for the full damage, if it participated in the traffic at all, regardless of whether any one of the defendants was "the carrier receiving the freight for transportation, initiating and controlling the method or mode of carriage and billing the freight through to destination at the aggregate rates of compensation charged." We think, however, that such limitation should control in these cases, for the reason

that the alternative action allowed by our order of Nov. 14, 1892, the furnishing of tank cars to shippers, must be taken by the carrier on whose road the shipment originates, and that such cars must, if provided at all, be supplied from equipment in its possession, or by it through arrangement with connecting carriers.

It may be urged as an objection to our construction of the statute in these cases, as affecting oil transportation generally over connecting lines, that while an intermediate or terminal carrier in a line may be in a position to furnish tank cars to its own shippers, it may, while so doing, be unable to provide such cars for shipments over its road from points on the roads of connecting carriers having no tank cars, and that to compel it to carry the barrel package free in shipments received from carriers having no tank cars, would be unjust. But there would not be any force in such an objection. When connecting carriers make a through route and establish through rates which apply as single charges for the whole service, they hold themselves out as carriers over such route at such rates, and must be prepared to furnish suitable "instrumentalities of shipment and carriage," so that the transportation may be conducted without wrong or injustice to those who desire to use the through line.

At the hearing, counsel for the Boston & Maine R. Co. claimed partial exemption from the order for reparation on the ground that, as to the oil shipments transported over its road from Boston to Boston points, it was not a party to any joint tariff of rates, except during the period from September 3 to November 6, 1888, when, by supplement to Oil Tariff 72, the tariff then in force, those points reached by the Boston & Maine from Boston were excepted from the operation of such joint tariff. There is no denial that the transportation by the Boston & Maine to those points was under the through billing and part of the continuous carriage of through shipments from the refining points to destinations, or that a single charge for the whole service was made and collected on each shipment and subsequently divided among the carriers over the through line. The mere circumstance that the Boston & Maine received a share of the total through charge which was equal to its individually established rate from Boston to the points of destination, is altogether insufficient to make these shipments take on a purely local character over the Boston

& Maine; and if the shipments were not in all essential respects local from Boston to the destination points, then they were through shipments over the through line of the connecting carriers, and must be so treated. It is unnecessary to cite the various decisions which have been rendered to this effect.

It is not material in these cases whether the claimants, who are all shippers, or whether the consignees paid the transportation charges. The wrongs inflicted resulted from regulations established by the carriers antecedent to the shipments, and the movement of the property depended upon the shipper's acceptance of conditions thus notified to him in advance. He had to regulate his price for oil accordingly. Moreover, it is part of the proof that the cost of the transportation was an item of expense which was borne by the shipper and not by the consignee. That damage resulted to the claiming shippers, to the extent of the charge on the barrel package, is clearly demonstrated.

Of the various carriers named as defendants in these cases in our order of November 14, 1892, only the Western New York & Pennsylvania and the New York, Lake Erie & Western appear to have been initial carriers of oil shipments mentioned in the claims. These roads have been in the possession of Receivers and operated under the direction of United States courts during a portion of the time properly covered by the claims. The affairs of the Western New York & Pennsylvania Railroad Company passed into the hands of Samuel G. DeCoursey, as Receiver, on or about April 1, 1893, and said Receiver was operating this road on May 15, 1894, when the hearing of this matter took place. The New York, Lake Erie & Western Railroad Company has been, since on or about July 26, 1893, and still is, operated by Receivers appointed and controlled by a Federal Court. The Receivers now in possession of the properties of this company are J. G. McCullough and E. B. Thomas. Receivers of railroad companies are common carriers subject to the prohibitions and requirements of, and to regulation under, the provisions of the Act to Regulate Commerce, and any order entered by us requiring reparation to shippers for acts made unlawful by the statute will doubtless be promptly obeyed by the Receivers of said defendants under direction of the courts from which, respectively, their authority to act was derived.

On July 12, 1895, counsel for the defendant, the Lehigh Valley Railroad Company, suggested to the Commission, by the filing of an affidavit of John R. Fanshawe and copy of a lease of the Lehigh Valley Railroad to the Philadelphia & Reading Railroad Company, that for the period between February 11, 1892, and August 1, 1893 (a portion of the time covered by these reparation claims) the Lehigh Valley Railroad was operated by the Philadelphia & Reading Railroad Company, as lessee, under the terms of a lease bearing the date first mentioned; and that, during such time, the receipts from the operation of the Lehigh Valley road inured to and were received by the Philadelphia & Reading Railroad Company, and were not received by the defendant, the Lehigh Valley Railroad Company.

Though the Philadelphia & Reading Company, as lessee, would be liable for injuries inflicted during its management of the road, that company is not a party to these proceedings. It is understood that the Lehigh Valley Railroad Company resumed operation of its properties under a clause in the lease providing for its termination at the option of the lessor company, in the event of the termination, for any reason whatsoever, of a certain agreement, of even date therewith, between the Lehigh Valley Coal Company and the Philadelphia & Reading Coal & Iron Company. There is thus raised in these proceedings the question whether the lessor company is liable to respond in damages to parties injured through nonperformance of public duties as a common carrier during the operation of its railroad property by a lessee.

The lessor company has been held not liable for breaches of contract entered into by its lessee. *Mahoney v. Atlantic & St. L. R. Co.* 63 Me. 68, and other cases cited in 19 Am. & Eng. Enc. Law, 903. But Green's Brice's *Ultra Vires*, 398, and authorities there cited, are to the effect that "A railroad cannot, by leasing its corporate property and franchises, relieve itself from liability to the public for injuries sustained and damages resulting from breach of contract or duty by the lessee."

But in our view there was no element of contract in the matters now under consideration, and whether the lessor railroad company is or is not liable for a breach of contract entered into by the lessee company affecting public interests in the operation of the

road, does not touch the point in question. This defendant railroad company was engaged in carrying oil, and being so engaged, it was bound to furnish equal facilities to shippers of oil and to carry under like terms for all. The defendant company did not do this, and it was not done while the lessee was operating the road. On the contrary, some shippers, through unequal terms imposed, were obliged to pay more for the carriage of their oil than was exacted of competing shippers, and the only alternative possessed by those discriminated against was to go out of the business of shipping oil to points reached by the Lehigh Valley road. These shippers might, it is true, have gone to very considerable expense in supplying themselves with tank cars and thus put themselves in a position which would have enabled them to ship oil and pay only for having the oil transported; but if this could be required of them, it might, with equal justice, be held that if they did not like the regulations imposed by the Lehigh Valley and its connecting roads, their recourse was to build and operate a railroad of their own. The violations of law found to exist in these cases resulted from conditions of shipment and carriage antecedently imposed by the carriers, and the question does not, therefore, involve consideration of the lessor company's liability for breaches of the law occasioned by the failure of the lessee carrier to observe the terms of an agreement with the shipper to which the lessor was not, in any wise, a party.

The great weight of authorities cited in 19 Am. & Eng. Enc. Law, 889, 1 Spelling, Priv. Corp. 153, 1 Beach, Priv. Corp. 595, 1 Redf. Railways, 636, and Thompson on Carriers, is to the effect that the lessor company remains liable for the performance of public duties, and of all acts done by the lessee in the operation of the road, notwithstanding that the lease may be authorized by the legislature. "It is the accepted doctrine in this country that a railroad corporation cannot escape the performance of any duty or obligation imposed by its charter or the general laws of the state by a voluntary surrender of its road into the hands of lessees. \* \* \* The operation of the road by the lessees does not change the relations of the original company to the public." *Washington, A. & G. R. Co. v. Brown*, 84 U. S. 17 Wall. 445, 21 L. ed. 675. This was a case where a portion of the railroad, lying in the District of Columbia, was in the hands of a receiver



of the lessees, and the remainder, lying in Virginia, was still in the hands of the lessees, the whole railroad being worked on the joint account of the lessees on the Virginia side and the receiver on the District side. *Mr. Justice Davis* said, on the question of whether the defendant, the lessor company, was liable: "In this case the possession [of the receiver] was not exclusive, nor were the servants subject to the receiver's order alone. On the contrary, the road was run on the joint account of the lessees and receiver, and the servants employed and controlled by them jointly. Both were, therefore, alike responsible for the act complained of, and if so, *the original company* [the lessor] *is also responsible*, for the servants under such an employment, *in legal contemplation*, are as much the servants of the company as of the lessees and receiver." *Washington, A. & G. R. Co. v. Brown, supra*. This case of *Brown* was for illegal expulsion of complainant from a passenger car. We find it cited as an authority in a number of cases treating of the lessor carrier's liability.

In *Arrowsmith v. Nashville & D. R. Co.* 57 Fed. Rep. 171, the court endeavored to distinguish *Brown's* case by holding there was no showing in the latter proceeding that the lease had been authorized. In view of the broad ruling in the *Brown* case that "The operation of the road by the lessees does not change the relations of the original company to the public," and that "the original company is also responsible, for the servants under such an employment, in legal contemplation, are as much the servants of the company as of the lessees," we are unable to see how the fact or absence of statutory authority to make the lease can change the lessor's responsibility for the performance of public duties, unless such statutory authority contains express exemption of the lessor company. The decision in *Arrowsmith's* case, citing numerous authorities, is to the effect that "The duty to carry plaintiff's intestate with the highest degree of care and skill did not rest upon any charter requirement or spring from any general statutory law of the state. The duty was imposed by operation of common law upon the contract of carriage. The right to maintain this action arises from the contract relation of carrier and passenger." But whether *Brown's* case was properly distinguishable or not, the court also held in *Arrowsmith's* case that "Where obligations are imposed by charter or statute law

upon a railroad company for the protection and advantage of the general public, not having contract relations with it, it may very well be said that a general authority to lease out its road, which contains no provision exempting it from such public obligations, will not absolve it from liability." *Arrowsmith v. Nashville & D. R. Co. supra.*

We are not able to find in the statutes of Pennsylvania, New Jersey or New York, the states through which the Lehigh Valley runs, any specific exemption of lessor railroad companies from liability for damages resulting through failure to see to it that its public duties are performed in the operation of its line by a lessee. The conditions imposed upon shippers, which have been declared illegal in these proceedings, were established by the lessor company and continued without change by the lessee company. The lessor's liability was asserted in these cases before it undertook to lease the road, and damages were claimed on behalf of parties injured. These cases were decided during the time the lease was in force, but neither the lessee nor the lessor company took steps to obey our order requiring the illegal discrimination to cease. The lessor resumed operation of the road some time after our decision was rendered, and at no period during the pendency of these supplementary proceedings for reparation has it undertaken to comply with that decision; on the contrary, it has persisted in keeping up the unjust discriminations and unlawful prejudices which have been so strongly condemned herein. Moreover, the lease itself contains a provision in its eleventh clause or paragraph, by which, seeming to recognize its liability as lessor for its lessee's acts, it stipulates for indemnity against all loss or damage resulting from, or occasioned by, failure or neglect of the lessee to do whatever it may lawfully be required to do in the use, management and control of the demised premises.

The Lehigh Valley Railroad Company, a common carrier subject to the provisions of the Act to Regulate Commerce, could not, by leasing its road, free itself from liabilities for practices made illegal by that statute; nor, after resuming operation of its property pending proceedings against it to enforce statutory provisions so violated and to recover damages for injuries sustained under such violations, can it claim exemption from liability during the term of the lease.

Following are the names of claimants, members of the complaining associations, who served their claims upon defendant initial carriers in accordance with the stipulation entered into by counsel for claimants and defendants on May 16, 1894:

Initial carrier, **WESTERN NEW YORK & PENNSYLVANIA.**

Penn Refining Company, Limited, Oil City, Pa.

John Schwartz & Co., Titusville, Pa.

Rice & Robinson, Titusville, Pa.

Rice, Robinson & Foggan, Titusville, Pa.

Independent Refining Company, Limited, Oil City, Pa.

Genie Wood, doing business under the trade name of The Oil Creek Refining Works, Titusville, Pa.

American Oil Works, Limited, Titusville, Pa.

Western Refining Company, Limited, Titusville, Pa.

S. Y. Ramage, doing business under the trade name of The Mutual Oil Company, Reno, Pa.

National Oil Company, Limited, Titusville, Pa.

Continental Refining Company, Limited, Oil City, Pa.

International Oil Works, Limited, Titusville, Pa.

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Initial carrier, **NEW YORK, LAKE ERIE & WESTERN SYSTEM.**

A. L. Confer, doing business under the trade name of The Empire Oil Works, Reno, Pa.

S. Y. Ramage, doing business under the trade name of The Mutual Oil Company, Reno, Pa.

Penn Refining Company, Limited, Oil City, Pa.

Independent Refining Company, Limited, Oil City, Pa.

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In accordance with the above stated rulings and principles, we make the following findings and orders upon claims filed and served covering shipments of petroleum oil in barrels to New York and New York harbor points and Boston and points taking Boston rates, and which, between the 3d day of September, 1888, and the 15th day of May, 1894, were delivered by claiming shippers to the Western New York & Pennsylvania Railroad Company or its Receiver, for transportation to said destinations :

**CLAIM OF THE PENN REFINING COMPANY, LIMITED, OIL CITY, PA.**

The claimant, the Penn Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of eight thousand, five hundred and seventy-nine dollars (\$8579.00) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Oil City, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to the claimant, the Penn Refining Company, Limited, the said sum of eight thousand, five hundred and seventy-nine dollars (\$8579.00), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Penn Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of three hundred and ten dollars and ten cents (\$310.10) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Delaware, Lackawanna & Western Railroad from Oil City.

Pa., to Hoboken, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the Penn Refining Company, Limited, the said sum of three hundred and ten dollars and ten cents (\$310.10), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Penn Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, and the defendant, the Delaware & Hudson Canal Company, the sum of three hundred and forty-three dollars and fifty-eight cents (\$343.58) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said receiver for transportation over the Western New York & Pennsylvania Railroad, the New York, Lake Erie & Western Railroad, the Delaware & Hudson Canal Co.'s Railroad, and the Central Railroad of New Jersey from Oil City, Pa., to Newark, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver hereof, and the New York, Lake Erie & Western Railroad Company, and J. G. McCullough and E. B. Thomas, the Receivers thereof, and the Delaware &

Hudson Canal Company are hereby ordered and required to pay to the claimant, the Penn Refining Company, Limited, the said sum of three hundred and forty-three dollars and fifty-eight cents (\$343.58), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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**CLAIM OF JOHN SCHWARTZ & COMPANY, TITUSVILLE, PA.**

The claimants, John Schwartz & Company, of Titusville, Pa., are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of five hundred and fifty-eight dollars and twenty-two cents (\$558.22) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimants to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Delaware, Lackawanna & Western Railroad from Titusville, Pa., to Hoboken, N. J., which said shipments of oil in barrels were so transported over the said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimants, John Schwartz & Company, the said sum of five hundred and fifty-eight dollars and twenty-two cents (\$558.22), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, John Schwartz & Company, of Titusville, Pa., are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the New York,

Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, the sum of fifty-eight dollars and eighteen cents (\$58.18) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimants to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the New York, Lake Erie & Western Railroad from Titusville, Pa., to New York and Brooklyn, N. Y., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, are hereby ordered and required to pay to the claimants, John Schwartz & Company, the said sum of fifty-eight dollars and eighteen cents (\$58.18), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, John Schwartz & Company, of Titusville, Pa., are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of ten dollars and sixteen cents (\$10.16) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimants to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the West Shore Railroad from Titusville, Pa., to Weehawken, N. J., which said shipments of oil in barrels were so transported over the said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said

Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimants, John Schwartz & Company, the said sum of ten dollars and sixteen cents (\$10.16), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, John Schwartz & Company, of Titusville, Pa., are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of seven hundred and eighty-seven dollars and twenty cents (\$787.20) as reparation for damage resulting to claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimants to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the New York Central & Hudson River Railroad and connecting railroads from Titusville, Pa., to Pittsfield, Mass., Springfield, Mass., Holyoke, Mass., and Brattleboro, Vt., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statements thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimants, John Schwartz & Company, the said sum of seven hundred and eighty-seven dollars and twenty cents (\$787.20), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, John Schwartz & Company, of Titusville, Pa., are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. De-



DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of seven thousand, three hundred and ten dollars and ninety-seven cents (\$7310.97) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimants to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Titusville, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to the claimants, John Schwartz & Company, the said sum of seven thousand, three hundred and ten dollars and ninety-seven cents (\$7310.97), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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**CLAIM OF RICE & ROBINSON, OF TITUSVILLE, PA.**

The claimants, Reuben L. Rice and Joseph C. Robinson, as members of the firm of Rice & Robinson and as successors of the firm of Rice, Robinson & Witherop, are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of five thousand, one hundred and ninety-two dollars and fifty-nine cents (\$5192.59) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said firms to said Western New York & Pennsylvania Railroad Company, or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Titusville, Pa., to Perth Amboy, N. J., which said ship-

ments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 1st day of November, 1890, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to said claimants, Rice & Robinson, the said sum of five thousand, one hundred and ninety-two dollars and fifty-nine cents (\$5192.59), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, Reuben L. Rice and Joseph C. Robinson, as members of the firm of Rice & Robinson and as successors of the firm of Rice, Robinson & Witherop, are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of sixty-five dollars and eighteen cents (\$65.18) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said firm to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Delaware, Lackawanna & Western Railroad from Titusville, Pa., to Hoboken, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 1st day of November, 1890, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to said claimants, Rice & Robinson, the said sum of sixty-five dollars and eighteen cents (\$65.18), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, Reuben L. Rice and Joseph C. Robinson, as members of the firm of Rice & Robinson and as successors of the

firm of Rice, Robinson & Witherop, are entitled to recover from the defendant, the Western New York and Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, and the defendant, the Boston & Maine Railroad Company, the sum of four hundred and ninety-five dollars and sixteen cents (\$495.16) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said firms to said Western New York & Pennsylvania Railroad Company or to its said receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, the Fitchburg Railroad, and the Boston & Maine Railroad from Titusville, Pa., to Portland, Me., and other points to which the same transportation rates were applied, which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 1st day of November, 1890, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company and the Boston & Maine Railroad Company are hereby ordered and required to pay to said claimants, Rice & Robinson, the said sum of four hundred and ninety-five dollars and sixteen cents (\$495.16), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, Reuben L. Rice and Joseph C. Robinson, as members of the firm of Rice & Robinson and as successors of the firm of Rice, Robinson & Witherop, are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company, the sum of two hundred and eleven dollars and twenty cents (\$211.20) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said firms to said Western New York & Pennu

sylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad and the Fitchburg Railroad from Titusville, Pa., to Boston, Mass., and other points to which the same transportation rates were applied, which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 1st day of November, 1890, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and the Fitchburg Railroad Company are hereby ordered and required to pay to said claimants, Rice & Robinson, the said sum of two hundred and eleven dollars and twenty cents (\$211.20), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, Reuben L. Rice and Joseph C. Robinson, as members of the firm of Rice & Robinson and as successors of the firm of Rice, Robinson & Witherop, are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of one hundred and fifteen dollars and fifty-four cents (\$115.54) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said firms to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the New York Central & Hudson River Railroad from Titusville, Pa., to Boston, Mass., or points to which the same transportation rates were applied, which said shipments of oil were so transported over said railroads between the 3d day of September, 1888, and the 1st day of November, 1890, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to said claimants,

Rice & Robinson, the said sum of one hundred and fifteen dollars and fifty-four cents (\$115.54), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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**CLAIM OF RICE, ROBINSON & FOGGAN, OF TITUSVILLE, PA.**

The claimants, Rice, Robinson & Foggan, of Titusville, Pa., are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of five thousand, five hundred dollars and eighty-seven cents (\$5500.87) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimants to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Titusville, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 1st day of November, 1890, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to the claimants, Rice, Robinson & Foggan, the said sum of five thousand, five hundred dollars and eighty-seven cents (\$5500.87), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, Rice, Robinson & Foggan, of Titusville, Pa., are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of sixty-seven dollars and thirty-seven cents (\$67.37) as reparation for damage resulting

to said claimants from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimants to said Western New York & Pennsylvania Railroad or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Delaware, Lackawanna & Western Railroad from Titusville, Pa., to Hoboken, N. J., which said shipments of oil in barrels were so transported over said railroads between the 1st day of November, 1890, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimants, Rice, Robinson and Foggan, the said sum of sixty-seven dollars and thirty-seven cents (\$67.37) together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, Rice, Robinson & Foggan, of Titusville, Pa., are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of one hundred and twelve dollars and one cent (\$112.01) as reparation for damage resulting to said claimants from excessive and unlawful transportation charges exacted upon the shipments of petroleum oil in barrels delivered by said claimants to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad and the Fitchburg Railroad from Titusville, Pa., to Boston, Mass., or other points to which the same transportation rates were applied, which said shipments of oil in barrels were so transported over said railroads between the 1st day of November, 1890, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitch-

burg Railroad Company are hereby ordered and required to pay to the claimants, Rice, Robinson & Foggan, the said sum of one hundred and twelve dollars and one cent (\$112.01), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimants, Rice, Robinson & Foggan, of Titusville, Pa., are entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of one hundred and sixty-one dollars and ninety cents (\$161.90) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimants to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad, the New York Central & Hudson River Railroad and connecting railroads from Titusville, Pa., to Boston, Mass., or other points to which the same transportation rates were applied, which said shipments of oil in barrels were so transported over said railroads between the 1st day of November, 1890, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimants, Rice, Robinson & Foggan, the said sum of one hundred and sixty-one dollars and ninety cents (\$161.90), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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CLAIM OF THE INDEPENDENT REFINING COMPANY, LIMITED,  
OIL CITY, PA.

The claimant, the Independent Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel

G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, and the defendant, the Boston & Maine Railroad Company, the sum of twenty-six dollars and seventy-four cents (\$26.74) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, the Fitchburg Railroad, and the Boston & Maine Railroad from Oil City, Pa., to Haverhill, Mass., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the Fitchburg Railroad Company, and the Boston & Maine Railroad Company are hereby ordered and required to pay to the claimant, the Independent Refining Company, Limited, the said sum of twenty-six dollars and seventy-four cents (\$26.74), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894

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The claimant, the Independent Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of nine hundred and thirty-six dollars and eighteen cents (\$936.18) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, and the Fitchburg Railroad from Oil City, Pa., to Boston, Mass., and other points to which the same transportation rates were applied, which said shipments



of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the receiver thereof and the Fitchburg Railroad Company are hereby ordered and required to pay to the claimant, the Independent Refining Company, Limited, the said sum of nine hundred and thirty-six dollars and eighteen cents (\$936.18), together with interest thereon at the rate of 6 per cent per annum from May, 15, 1894.

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The claimant, the Independent Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of six thousand and fifty-one dollars and forty-seven cents (\$6051.47) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimants to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Oil City, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to the claimant, the Independent Refining Company, Limited, the said sum of six thousand and fifty-one dollars and forty-seven cents (\$6051.47), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

The claimant, the Independent Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company, the sum of two hundred and sixty-three dollars and thirty-four cents (\$263.34) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Oil City, Pa., to New York, N. Y., Communipaw, N. J., and Jersey City, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to the claimant, the Independent Refining Company, Limited, the said sum of two hundred and sixty-three dollars and thirty-four cents (\$263.34), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Independent Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, and the defendant, the Delaware & Hudson Canal Company, the sum of seven dollars and nineteen cents (\$7.19) as reparation for damage resulting to said claimant for excessive and unlawful transportation charges exacted upon a shipment of petroleum oil in barrels delivered by said claimant to said Western New York & Penn-

sylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the New York, Lake Erie & Western Railroad, the Delaware & Hudson Canal Co's Railroad, and the Central Railroad of New Jersey from Oil City, Pa., to Newark, N. J., which said shipment of oil in barrels was so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, and the Delaware & Hudson Canal Company are hereby ordered and required to pay to the claimant, the Independent Refining Company, Limited, the said sum of seven dollars and nineteen cents (\$7.19), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Independent Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of ninety-two dollars and fifty-nine cents (\$92.59) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, the New York, Ontario & Western Railway and the Central Railroad of New Jersey from Oil City, Pa., to Constable Hook, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Com-

pany and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the Independent Refining Company, Limited, the said sum of ninety-two dollars and fifty-nine cents (\$92.59), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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CLAIM OF GENIE WOOD, DOING BUSINESS UNDER THE TRADE  
NAME OF THE OIL CREEK REFINING WORKS, TITUSVILLE, PA.

The claimant, Genie Wood, of Titusville, Pa., doing business under the trade name of the Oil Creek Refining Works, is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of two thousand, seven hundred and sixteen dollars and fifty-one cents (\$2716.51) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Titusville, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to the claimant, Genie Wood, doing business under the trade name of the Oil Creek Refining Works, the said sum of two thousand, seven hundred and sixteen dollars and fifty-one cents (\$2716.51), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

The claimant, Genie Wood, of Titusville, Pa., doing business under the trade name of the Oil Creek Refining Works, is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of ninety-six dollars and thirty-two cents (\$96.32) for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the West Shore Railroad from Titusville, Pa., to New York, N. Y., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, Genie Wood, doing business under the trade name of the Oil Creek Refining Works, the said sum of ninety-six dollars and thirty-two cents (\$96.32), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, Genie Wood, of Titusville, Pa., doing business under the trade name of the Oil Creek Refining Works, is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of thirty-six dollars and twenty-eight cents (\$36.28) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the Delaware, Lackawanna & Western Railroad from Titusville, Pa., to New York, N. Y., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the

15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, Genie Wood, doing business under the trade name of the Oil Creek Refining Works, the said sum of thirty-six dollars and twenty-eight cents (\$36.28), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, Genie Wood, of Titusville, Pa, doing business under the trade name of the Oil Creek Refining Works, is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, the sum of ten dollars and ninety-nine cents (\$10.99) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad, the New York, Lake Erie & Western Railroad and connecting railroads from Titusville, Pa., to Providence, R. I., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, are hereby ordered and required to pay to the claimant, Genie Wood, doing business under the trade name of the Oil Creek Refining Works, the said sum of ten dollars and ninety-nine cents (\$10.99), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

The claimant, Genie Wood, of Titusville, Pa., doing business under the trade name of the Oil Creek Refining Works, is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of eleven dollars and twenty cents (\$11.20) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad, the New York Central & Hudson River Railroad and connecting railroads from Titusville, Pa., to Millington, Mass., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, Genie Wood, doing business under the trade name of the Oil Creek Refining Works, the said sum of eleven dollars and twenty-cents (\$11.20), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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**CLAIM OF THE AMERICAN OIL WORKS, LIMITED, TITUSVILLE, PA.**

The claimant, the American Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, and the defendant, the Boston & Maine Railroad Company, the sum of two hundred and fifty-four dollars and forty-eight cents (\$254.48) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the

Western New York & Pennsylvania Railroad, the West Shore Railroad, the Fitchburg Railroad and the Boston & Maine Railroad from Titusville, Pa., to Concord, N. H., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company, and the Boston & Maine Railroad Company are hereby ordered and required to pay to the claimant, the American Oil Works, Limited, the said sum of two hundred and fifty-four dollars and forty-eight cents (\$254.48), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the American Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of five hundred and twenty-six dollars and eighteen cents (\$526.18) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad and the Fitchburg Railroad from Titusville, Pa., to Northampton, Greenfield and Boston, Mass., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company, are hereby ordered and required to pay to the claimant, the American Oil Works,



Limited, the said sum of five hundred and twenty-six dollars and eighteen cents (\$526.18), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the American Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of one hundred and eighty dollars and seventy-six cents (\$180.76) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the West Shore Railroad from Titusville, Pa., to New York, N. Y., and Weehawken, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the American Oil Works, Limited, the said sum of one hundred and eighty dollars and seventy-six cents (\$180.76), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

The claimant, the American Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company, and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the New York, Lake Erie & Western Railroad Company, and J. G. McCullough and E. B. Thomas, the Receivers thereof, the sum of two hundred and six dollars and fourteen cents (\$206.14) as reparation for damage resulting to said claimant from excessive and unlawful transporta-

tion charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the New York, Lake Erie & Western Railroad and connecting railroads from Titusville, Pa., to East Boston, Mass., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, are hereby ordered and required to pay to the claimant, the American Oil Works, Limited, the said sum of two hundred and six dollars and fourteen cents (\$206.14), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the American Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of two hundred and sixty-nine dollars and eighty-three cents (\$269.83), as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, the Fitchburg Railroad, and the Providence & Worcester Railroad from Titusville, Pa., to Providence, R. I., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New

York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver, and the Fitchburg Railroad Company are hereby ordered and required to pay to the claimant, the American Oil Works, Limited, the said sum of two hundred and fifty-nine dollars and eighty-three cents (\$259.83), together with interest thereon at the rate of six per cent per annum from May 15, 1894.

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The claimant, the American Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the New York, Lake Erie & Western Railroad Company, and J. G. McCullough and E. B. Thomas, the Receivers thereof, the sum of fifty-six dollars and fifty-five cents (\$56.55), as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said receiver, for transportation over the Western New York & Pennsylvania Railroad and the New York, Lake Erie & Western Railroad from Titusville, Pa., to Jersey City, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, are hereby ordered and required to pay to the claimant, the American Oil Works, Limited, the said sum of fifty-six dollars and fifty-five cents (\$56.55), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the American Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. De-

Coursey, the Receiver thereof, and the defendant, the New York, Lake Erie & Western Railroad Company, and J. G. McCullough and E. B. Thomas, the Receivers thereof, and the defendant, the Delaware & Hudson Canal Company, and the defendant, the Fitchburg Railroad Company, the sum of ten dollars and fifty-eight cents (\$10.58) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the New York, Lake Erie & Western Railroad, the Delaware & Hudson Canal Company's Railroad and the Fitchburg Railroad, from Titusville, Pa., to Southbridge, Mass., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, and the Delaware & Hudson Canal Company and the Fitchburg Railroad Company, are hereby ordered and required to pay to the claimant, the American Oil Works, Limited, the said sum of ten dollars and fifty-eight cents (\$10.58), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the American Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of three hundred and seven dollars and forty-nine cents (\$307.49) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transporta-

tion over the Western New York & Pennsylvania Railroad, the New York Central & Hudson River Railroad and connecting railroads from Titusville, Pa., to Norwalk, Conn., Springfield, Mass., North Adams, Mass., Simsbury, Conn., Cambridge Junction, Vt., Putnam, Conn., and other points in New England to which the transportation rate in force to Boston was applied, which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the American Oil Works, Limited, the said sum of three hundred and seven dollars and forty-nine cents (\$307.49), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the American Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of four thousand, four hundred and eighty-nine dollars and thirty-one cents (\$4489.31) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Titusville, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Val-

ley Railroad Company are hereby ordered and required to pay to the claimant, the American Oil Works, Limited, the said sum of four thousand, four hundred and eighty-nine dollars and thirty-one cents (\$4489.31), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the American Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of two hundred and twenty-four dollars and thirty-seven cents (\$224.37) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the Delaware, Lackawanna & Western Railroad from Titusville, Pa., to Hoboken, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the American Oil Works, Limited, the said sum of two hundred and twenty-four dollars and thirty-seven cents (\$224.37), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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CLAIM OF THE WESTERN REFINING COMPANY, LIMITED, TITUSVILLE, PA.

The claimant, the Western Refining Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and

Samuel G. DeCoursey, the Receiver thereof, the sum of one hundred and fifty-four dollars and seventy cents (\$154.70) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the West Shore Railroad from Titusville, Pa., to New York, N. Y., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the receiver thereof, are hereby ordered and required to pay to the claimant, the Western Refining Company, Limited, the said sum of one hundred and fifty-four dollars and seventy cents (154.70), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Western Refining Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, and the defendant, the Delaware & Hudson Canal Company, the sum of thirty-six dollars and two cents (\$36.02) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the New York, Lake Erie & Western Railroad and the Central Railroad of New Jersey from Titusville, Pa., to Brilla, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement

thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, and the Delaware & Hudson Canal Company are hereby ordered and required to pay to the claimant, the Western Refining Company, Limited, the said sum of thirty-six dollars and two cents (\$36.02), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Western Refining Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of fifty-five dollars and seventy-nine cents (\$55.79) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Delaware, Lackawanna & Western Railroad from Titusville, Pa., to New York, N. Y., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and S. G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the Western Refining Company, Limited, the said sum of fifty-five dollars and seventy-nine cents (\$55.79), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Western Refining Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the



Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of one thousand, three hundred and eighty-three dollars (\$1383) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Titusville, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to the claimant, the Western Refining Company, Limited, the said sum of one thousand, three hundred and eighty-three dollars (\$1383), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Western Refining Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of eighty-two dollars and eighty-six cents (\$82.86) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the New York Central & Hudson River Railroad and connecting railroads from Titusville, Pa., to Providence, R. I., and Hartford, Conn., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and

the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the Western Refining Company, Limited, the said sum of eighty-two dollars and eighty-six cents (\$82.86), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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**CLAIM OF S. Y. RAMAGE, DOING BUSINESS UNDER THE TRADE  
NAME OF THE MUTUAL OIL COMPANY, RENO, PA.**

The claimant, S. Y. Ramage, of Reno, Pa., doing business under the trade name of the Mutual Oil Company, is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of one hundred and thirty-eight dollars and fifty-two cents (\$138.52) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Reno, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company, are hereby ordered and required to pay to the claimant, S. Y. Ramage, doing business under the trade name of the Mutual Oil Company, the said sum of one hundred and thirty-eight dollars and fifty-two cents (\$138.52), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

## CLAIM OF THE NATIONAL OIL COMPANY, LIMITED, TITUSVILLE, PA.

The claimant, the National Oil Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of three hundred and forty dollars and twenty-five cents (\$340.25) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, and the New York Central & Hudson River Railroad and connecting railroads from Titusville, Pa., to points in New England to which the transportation rate in force to Boston was applied, which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the National Oil Company, Limited, the said sum of three hundred and forty dollars and twenty-five cents (\$340.25), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the National Oil Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of ninety-one dollars and twenty-three cents (\$91.23) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore

Railroad, the Fitchburg Railroad and the Concord & Montreal Railroad from Titusville, Pa., to points in New England to which the transportation rate in force to Boston was applied, which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company are hereby ordered and required to pay to the claimant, the National Oil Company, Limited, the said sum of ninety-one dollars and twenty-three cents (\$91.23), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the National Oil Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company, and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of two hundred and seven dollars and thirty-seven cents (\$207.37) as reparation for damage resulting to such claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company, or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad and the Fitchburg Railroad from Titusville to points in New England to which the transportation rate in force to Boston was applied, which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company, are hereby ordered and required to pay to the claimant, the National Oil Company,

Limited, the said sum of two hundred and seven dollars and thirty-seven cents (\$207.37), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the National Oil Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, and the defendant, the Boston & Maine Railroad Company, the sum of one hundred and twelve dollars and seventy-seven cents (\$112.77) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, the Fitchburg Railroad and the Boston & Maine Railroad from Titusville, Pa., to points on the Boston & Maine Railroad to which the transportation rate in force to Boston was applied, which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company and the Boston & Maine Railroad Company, are hereby ordered and required to pay to the claimant, the National Oil Company, Limited, the said sum of one hundred and twelve dollars and seventy-seven cents (\$112.77), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the National Oil Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the New

York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, the sum of four hundred and seventy-four dollars and forty-two cents (\$474.42) as reparation for damages resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the New York, Lake Erie & Western Railroad and the New York & New England Railroad from Titusville, Pa., to points in New England to which the transportation rate in force to Boston was applied, which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, are hereby ordered and required to pay to the claimant, the National Oil Company, Limited, the said sum of four hundred and seventy-four dollars and forty-two cents (\$474.42), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the National Oil Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company, and Samuel G. DeCoursey, the Receiver thereof, the sum of sixty-six dollars and ninety-one cents (\$66.91) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad and the New York & New England Railroad from Titusville, Pa., to points in New England to which the transpor-

tation rate in force to Boston was applied, which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the National Oil Company, Limited, the said sum of sixty-six dollars and ninety-one cents (\$66.91), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the National Oil Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of two thousand, seven hundred and seventy-four dollars and ninety-seven cents (\$2774.97) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York and Pennsylvania Railroad and the Lehigh Valley Railroad from Titusville, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company, are hereby ordered and required to pay to the claimant, the National Oil Company, Limited, the said sum of two thousand, seven hundred and seventy-four dollars and ninety-seven cents (\$2774.97), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

The claimant, the National Oil Company, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York and Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the New York, Lake Erie & Western Railroad Company, and J. G. McCullough and E. B. Thomas, the Receivers thereof, the sum of seventy-two dollars and two cents (\$72.02) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the New York, Lake Erie & Western Railroad from Titusville, Pa., to Jersey City, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, are hereby ordered and required to pay to the claimant, the National Oil Company, Limited, the said sum of seventy-two dollars and two cents (\$72.02), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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**CLAIM OF THE CONTINENTAL REFINING COMPANY, OIL CITY, PA.**

The claimant, the Continental Refining Company, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of sixty-two dollars and seventy-six cents (\$62.76) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant



to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, the Fitchburg Railroad and the Concord & Montreal Railroad from Oil City, Pa., to Lebanon and Enfield, N. H., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company are hereby ordered and required to pay to the claimant, the Continental Refining Company, the said sum of sixty-two dollars and seventy-six cents (\$62.76), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Continental Refining Company, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of one hundred and sixty-seven dollars and thirty-four cents (\$167.34) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the New York Central & Hudson River Railroad and connecting railroads from Oil City, Pa., to Boston and Claremont, Mass., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the Continental Refining Company, the said sum of

one hundred and sixty-seven dollars and thirty-four cents (\$167.34) together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Continental Refining Company, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of nineteen dollars and seventy-three cents (\$19.73) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad and the Fitchburg Railroad from Oil City, Pa., to Exeter, N. H., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company are hereby ordered and required to pay to the claimant, the Continental Refining Company, the said sum of nineteen dollars and seventy-three cents (\$19.73), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Continental Refining Company, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, and the defendant, the Delaware & Hudson Canal Company, the sum of two hundred and sixty-three dollars and one cent (\$263.01) as reparation for

damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the New York, Lake Erie & Western Railroad, the Delaware & Hudson Canal Company's Railroad and the Central Railroad of New Jersey from Oil City, Pa., to Newark, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, and the Delaware & Hudson Canal Company are hereby ordered and required to pay to the claimant, the Continental Refining Company, the said sum of two hundred and sixty-three dollars and one cent (\$263.01), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Continental Refining Company, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of two thousand, three hundred and ninety-seven dollars and one cent (\$2397.01) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Oil City, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3d day

of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to the claimant, the Continental Refining Company, the said sum of two thousand, three hundred and ninety-seven dollars and one cent (\$2397.01), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the Continental Refining Company, of Oil City, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of thirty dollars and eighty-nine cents (\$30.89) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad and the New York & New England Railroad from Oil City, Pa., to Norfolk, Conn., and other points to which the transportation rate in force to Boston was applied, which said shipments of oil in barrels were so transported over said railroads between the 3d day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the Continental Refining Company, the said sum of thirty dollars and eighty-nine cents (\$30.89), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

## CLAIM OF THE INTERNATIONAL OIL WORKS, LIMITED, TITUSVILLE, PA.

The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of eight thousand, three hundred and thirty-three dollars and thirty-six cents (\$8333.36) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Titusville, Pa., to Perth Amboy, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of eight thousand, three hundred and thirty-three dollars and thirty-six cents (\$8333.36), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Lehigh Valley Railroad Company, the sum of fifty-one dollars and twenty cents (\$51.20) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or

to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the Lehigh Valley Railroad from Titusville, Pa., to Jersey City, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Lehigh Valley Railroad Company are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of fifty-one dollars and twenty cents (\$51.20), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company, and Samuel G. DeCoursey, the Receiver thereof, the sum of three hundred and seventy-six dollars and forty-six cents (\$376.46) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the Delaware, Lackawanna & Western Railroad from Titusville, Pa., to Hoboken, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of three hundred and seventy-six dollars and forty-six cents (\$376.46), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of forty-three dollars and thirty-seven cents (\$43.37) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, the New York, Ontario & Western Railway and the Central Railroad of New Jersey from Titusville, Pa., to Constable Hook, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of forty-three dollars and thirty-seven cents (\$43.37), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of eight dollars and sixty-seven cents (\$8.67) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the West Shore Railroad from Titusville, Pa., to Weehawken, N. J., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by

said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of eight dollars and sixty-seven cents (\$8.67), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of eleven dollars and nineteen cents (\$11.19) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, the Fitchburg Railroad, and the New York, Providence & Boston Railroad from Titusville, Pa., to Woonsocket, R. I., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of eleven dollars and nineteen cents (\$11.19), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G.



DeCoursey, the Receiver thereof, the sum of eleven dollars and eleven cents (\$11.11) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad and the New York Central & Hudson River Railroad from Titusville, Pa., to New York, N. Y., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of eleven dollars and eleven cents (\$11.11), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of five hundred and fifty-one dollars and ten cents (\$551.10) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad and the Fitchburg Railroad from Titusville, Pa., to Boston, Mass., and other New England points to which the transportation rate in force to Boston, was applied, which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon

made by said Western New York & Pennsylvania Railroad Company and its said Receiver ; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of five hundred and fifty-one dollars and ten cents (\$551.10), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of one thousand, twenty-seven dollars and forty-nine cents (\$1027.49) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver, for transportation over the Western New York & Pennsylvania Railroad and the New York Central & Hudson River Railroad and connecting railroads to Boston, Mass., and other New England points to which the transportation rate in force to Boston, was applied, which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and said Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of one thousand, twenty seven dollars and forty-nine cents (\$1027.49), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western

New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the defendant, the Fitchburg Railroad Company, the sum of eight hundred and four dollars and eighty-seven cents (\$804.87) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, the Fitchburg Railroad and the Concord & Montreal Railroad from Titusville, Pa., to Concord, N. H., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, and the Fitchburg Railroad Company are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of eight hundred and four dollars and eighty-seven cents (\$804.87), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The claimant, the International Oil Works, Limited, of Titusville, Pa., is entitled to recover from the defendant, the Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, the sum of nine dollars and eleven cents (\$9.11) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said Western New York & Pennsylvania Railroad Company or to its said Receiver for transportation over the Western New York & Pennsylvania Railroad, the West Shore Railroad, and the New York & New England Railroad, from Titusville, Pa., to Danielsonville, Conn., which said shipments of oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears from

claim filed and statement thereon made by said Western New York & Pennsylvania Railroad Company and its said Receiver; and the said Western New York & Pennsylvania Railroad Company and Samuel G. DeCoursey, the Receiver thereof, are hereby ordered and required to pay to the claimant, the International Oil Works, Limited, the said sum of nine dollars and eleven cents (\$9.11), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The defendant, the New York, Lake Erie & Western Railroad Company and its Receivers, J. G. McCullough and E. B. Thomas, have failed to check the claims served upon them by claimants herein, pursuant to the stipulation made in open session of the Commission at Titusville on May 16, 1894, or to make and file any statement with the Commission in regard thereto. This railroad system was the initial carrier of shipments described in the claims so served, and in the absence of information concerning rates charged and routing taken by the shipments, which could only be furnished by said New York, Lake Erie & Western Railroad Company and its Receivers, and in consequence of their default in regard to said stipulation, our findings and orders as to said claims must be based upon what is set forth in claims on file, and served as aforesaid, and said New York, Lake Erie & Western Railroad Company and its Receivers must be required to pay the amounts herein awarded on said claims to the several claimants found entitled thereto.

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**CLAIM OF A. L. CONFER, DOING BUSINESS UNDER THE TRADE  
NAME OF THE EMPIRE OIL WORKS, RENO, PA.**

The claimant, A. L. Confer, of Reno, Pa., doing business under the trade name of the Empire Oil Works, is entitled to recover from the defendant, the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, the sum of one thousand, nine hundred and forty-three dollars and eighty-seven cents (\$1943.87) as reparation

for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said New York, Lake Erie & Western Railroad Company or to its Receivers, for transportation over roads operated by said railroad company or its Receivers or over said roads and railroads connecting therewith, which said shipments of petroleum oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears by claim on file and claim forwarded by said claimant on January 31, 1895, to George G. Cochran, General Traffic Manager, New York, Lake Erie & Western Railroad system, of New York City, N. Y., that is to say, the sum of one thousand, four hundred and eighty-nine dollars and twenty-one cents (\$1489.21) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Perth Amboy, N. J., from September 20, 1888, to December 27, 1893; the sum of two hundred and four dollars and seventy-six cents (\$204.76) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to New York, N. Y., from November 1, 1888, to July 3, 1893; the sum of fifty-five dollars and thirty cents (\$55.30) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Jersey City, N. J., from April 5, 1890, to November 21, 1893; the sum of eight dollars and forty cents (\$8.40) for excessive and unlawful transportation charges on a shipment of petroleum oil in barrels by said claimant from Reno, Pa., to Elizabethport, N. J., on or about February 27, 1889; the sum of twenty-four dollars (\$24.00) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Providence, R. I., from May 10, 1890, to September 6, 1890; the sum of fourteen dollars (\$14.00) for excessive and unlawful transportation charges on a shipment of petroleum oil in barrels by said claimant from Reno, Pa., to Boston, Mass., on or about March 25, 1889; the sum of one hundred and twenty-five dollars and forty cents (\$125.40) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to North Adams, Mass.,

from September 27, 1893, to February 26, 1894; the sum of twenty-two dollars and eighty cents (\$22.80) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Bellows Falls, Vt., and Keene, N. H., on or about March 7, 1894. And the said New York, Lake Erie & Western Railroad Company, and J. G. McCullough and E. B. Thomas, the Receivers thereof, are hereby ordered and required to pay to the claimant, A. L. Confer, doing business under the trade name of the Empire Oil Works, the aforesaid sums, amounting in all to the first mentioned sum of one thousand, nine hundred and forty-three dollars and eighty-seven cents (\$1943.87), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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**CLAIM OF THE PENN REFINING COMPANY, LIMITED, OIL CITY, PA.**

The claimant, the Penn Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, the sum of one thousand, two hundred and seventy-three dollars and eighty cents (\$1273.80) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said New York, Lake Erie & Western Railroad Company or to its Receivers, for transportation over roads operated by said railroad company or its Receivers, or over said roads and railroads connecting therewith, which said shipments of petroleum oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears by claim on file and claim served September 7, 1894, by said claimant, on D. W. Guernsey, agent, New York, Lake Erie & Western Railroad system, that is to say, the sum of one hundred and forty dollars (\$140) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Jersey City, N. J., from September 18, 1888, to May 9, 1889; the sum of seven hundred and fifty-three dollars and twenty cents (\$753.20) for excessive and

unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Perth Amboy, N. J., from October 6, 1888, to November 1, 1890; the sum of twenty-five dollars and twenty cents (\$25.20) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to New York, N. Y., on or about October 8, 1888; the sum of twenty-two dollars and forty cents (\$22.40) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Elizabethport, N. J., on or about December 7, 1888; the sum of seventy-eight dollars and forty cents (\$78.40) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Newark and Brills Station, N. J., from October 4, 1890, to September 19, 1893; the sum of one hundred and thirty-six dollars and eighty cents (\$136.80) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Providence, R. I., from October 12, 1889, to November 16, 1889; the sum of thirty dollars and forty cents (\$30.40) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Quidnick, R. I., on or about October 12, 1889; the sum of fifteen dollars and twenty cents (\$15.20) for excessive and unlawful transportation charges on a shipment of petroleum oil in barrels by said claimant from Oil City, Pa., to Holyoke, Mass., on or about October 12, 1889; the sum of forty-one dollars and eighty cents (\$41.80) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Fall River, Mass., from October 25, 1889, to March 8, 1890; the sum of fifteen dollars and twenty cents (\$15.20) for excessive and unlawful transportation charges on a shipment of petroleum oil in barrels by said claimant from Oil City, Pa., to Boston, Mass., on or about October 26, 1889; the sum of fifteen dollars and twenty cents (\$15.20) for excessive and unlawful transportation charges on a shipment of petroleum oil in barrels by said claimant from Oil City, Pa., to Portland, Me., on or about November 6, 1889. And the said New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof,

are hereby ordered and required to pay to the claimant, the Penn Refining Company, Limited, the aforesaid sums, amounting in all to the first mentioned sum of one thousand, two hundred and seventy-three dollars and eighty cents (\$1273.80), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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**CLAIM OF THE INDEPENDENT REFINING COMPANY, LIMITED, OIL CITY, PA.**

The claimant, the Independent Refining Company, Limited, of Oil City, Pa., is entitled to recover from the defendant, the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, the sum of seven hundred and two dollars and forty-eight cents (\$702.48) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said New York, Lake Erie & Western Railroad Company or to its Receivers, for transportation over roads operated by said railroad company or its Receivers or over said roads and railroads connecting therewith, which said shipments of petroleum oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears by claim on file and claim forwarded by counsel for said claimant on or about August 1, 1895, to H. Schoonmaker, Counsel, New York, Lake Erie & Western Railroad system, at New York City, N. Y., that is to say, the sum of six hundred and thirty dollars and twenty-eight cents (\$630.28), for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Perth Amboy, N. J., from September 13, 1888, to February 29, 1892; the sum of twenty-four dollars (\$24.00) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Boston, Mass., on or about October 2 and October 4, 1889; the sum of twenty-four dollars (\$24.00) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Lawrence, Mass.,



from January 27, 1889, to April 30, 1889; the sum of twenty-four dollars and twenty cents (\$24.20) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Oil City, Pa., to Bellows Falls, Vt., from July 5, 1889, to November 28, 1890. And the said New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, are hereby ordered and required to pay to the claimant, the Independent Refining Company, Limited, the aforesaid sums, amounting in all to the first mentioned sum of seven hundred and two dollars and forty-eight cents (\$702.48), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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**CLAIM OF S. Y. RAMAGE, DOING BUSINESS UNDER THE TRADE NAME OF THE MUTUAL OIL COMPANY, RENO, PA.**

The claimant, S. Y. Ramage, of Reno, Pa., doing business under the trade name of the Mutual Oil Company, is entitled to recover from the defendant, the New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, the sum of fourteen thousand, two hundred and sixty-one dollars and forty-two cents (\$14,261.42) as reparation for damage resulting to said claimant from excessive and unlawful transportation charges exacted upon shipments of petroleum oil in barrels delivered by said claimant to said New York, Lake Erie & Western Railroad Company or to its Receivers, for transportation over roads operated by said railroad company or its Receivers or over said roads and railroads connecting therewith, which said shipments of petroleum oil in barrels were so transported over said railroads between the 3rd day of September, 1888, and the 15th day of May, 1894, as appears by claim on file and claim forwarded by said claimant on December 27, 1894, to H. Schoonmaker, Counsel, New York, Lake Erie & Western Railroad system, New York City, N. Y., that is to say: The sum of twelve thousand, seven hundred and twenty-four dollars and sixty cents (\$12,724.60) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Perth Amboy, N. J., from September 18,

1888, to February 13, 1891; the sum of eighty-four dollars (\$84.00) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Elizabethport, N. J., from September 29, 1888, to December 31, 1890; the sum of fifty-six dollars (\$56.00) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Hoboken, N. J., from October 11, 1888, to January 5, 1889; the sum of one hundred and twenty-six dollars (\$126.00) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to New York City, N. Y., from January 15, 1889, to March 29, 1893; the sum of sixteen dollars and eighty cents (\$16.80) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Jersey City, N. J., from July 17, 1889, to July 24, 1889; the sum of sixteen dollars and eighty cents (\$16.80) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Bergen Point, N. J., from January 28, 1892, to January 18, 1893; the sum of seven hundred and fifty dollars and twenty-six cents (\$750.26) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Centerville, N. J., from February 11, 1890, to May 11, 1891; the sum of eight dollars and forty cents (\$8.40) for excessive and unlawful transportation charges on a shipment of petroleum oil in barrels by said claimant from Reno, Pa., to Newark, N. J., on or about September 6, 1892; the sum of one hundred and eight dollars and eighty cents (\$108.80) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Middleboro, Mass., from September 22, 1888, to November 21, 1890; the sum of two hundred and twenty-eight dollars and eighty cents (\$228.80) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Fitzwilliam, N. H., from October 6, 1888, to October 30, 1890; the sum of nineteen dollars and twenty cents (\$19.20) for excessive and unlawful transportation charges on a shipment of petroleum oil in barrels by said claimant from Reno, Pa., to Portland, Me., on or about November 23, 1889; the sum of forty-

one dollars and seventy-six cents (\$41.76) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Boston, Mass., from October 30, 1890, to February 23, 1891; the sum of nineteen dollars and twenty cents (\$19.20) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to East Boston, Mass., from November 3, 1890, to November 13, 1890; the sum of twenty-eight dollars and eighty cents (\$28.80) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Winchendon, Mass., from October 6, 1890, to November 15, 1890; the sum of nineteen dollars and twenty cents (\$19.20) for excessive and unlawful transportation charges on shipments of petroleum oil in barrels by said claimant from Reno, Pa., to Keene, N. H., from December 2, 1890, to January 10, 1891; the sum of twelve dollars and eighty cents (\$12.80) for excessive and unlawful transportation charges on a shipment of petroleum oil in barrels by said claimant from Reno, Pa., to Springfield, Mass., on or about October 15, 1892; and the said New York, Lake Erie & Western Railroad Company and J. G. McCullough and E. B. Thomas, the Receivers thereof, are hereby ordered and required to pay to the claimant, S. Y. Ramage, doing business under the trade name of the Mutual Oil Company, the aforesaid sums, amounting in all to the first mentioned sum of fourteen thousand, two hundred and sixty one dollars and forty-two cents (\$14,261.42), together with interest thereon at the rate of 6 per cent per annum from May 15, 1894.

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The foregoing shall stand as the report and orders of the Commission upon the claims for reparation in these cases which have been served by claimants upon defendant initial carriers under the stipulation of counsel on May 16, 1894. The rights of other persons, firms or corporations entitled to claim reparation under said order of November 14, 1892, are unaffected by these supplementary proceedings and orders, and such claimants may, on failure of the defendants to adjust their demands, proceed, upon the basis of reparation prescribed in said order, to enforce their claims in the

courts as provided by the law. A number of claims have been suggested which apply to shipments participated in by initial carriers not mentioned in said order of Nov. 14, 1892. These claims are not directly involved in these cases, and the claimants are entitled to proceed against the carriers concerned in such manner and under such provisions of law as they may be advised.

THE INDEPENDENT REFINERS' ASSOCIATION OF  
TITUSVILLE, PENNSYLVANIA, AND THE INDE-  
PENDENT REFINERS' ASSOCIATION OF OIL  
CITY, PENNSYLVANIA, V. THE PENNSYLVANIA  
RAILROAD COMPANY AND THE WESTERN NEW  
YORK & PENNSYLVANIA RAILROAD COMPANY.

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DECISION ON SUPPLEMENTARY HEARING, AND IN  
THE MATTER OF REPARATION.

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1. Upon supplemental hearing a finding of fact in the report filed herein on November 14, 1892, and applying to the defendant, the Pennsylvania Railroad Company, is changed so as to appear as a summary of certain evidence.
2. It appearing that defendants are and have been able to furnish a large number of tank cars for the shipment of petroleum oil, and that defendants' liability to make reparation to claimants in this case under the order of the Commission of November 14, 1892, depends upon whether the use of tank cars for shipments of oil over the defendant roads, or by the "Green Line," has been open to the claimants, or, if so, whether the delivering carrier made this privilege useless to claimants through discriminating exactions imposed at the terminal point; and, it also appearing that the claims in this case require separate investigation, and that the present record does not enable the Commission to determine whether any of such claims are supported by facts as would bring them within the terms of the order of November 14, 1892:  
*Held*, that claimants' further remedy is by proceeding in the courts under section 16 of the Act to Regulate Commerce.

(No. 163.)

*M. J. Heywang* for complainants.  
*James A. Logan* for Pennsylvania R. Co.  
*Frank Rumsey* for Western New York & P. R. Co.

## REPORT AND OPINION OF THE COMMISSION.

## BY THE COMMISSION:

It is claimed for the defendants in this case that they have been, before and since the decision of the Commission herein on November 14, 1892, and are now, complying with the requirements of our order of that date by which the defendants were, among other things, directed as follows:

To "cease and desist from charging or collecting any rate or sum for the transportation of the barrel package on shipments of oil in barrels over their respective roads or lines from the oil regions of Western Pennsylvania to New York and New York harbor points, or to Boston and Boston points; or, on reasonable notice, promptly furnish tank cars to complainants and other shippers who may apply therefor for the purpose of loading and shipping oil therein to such New York harbor and Boston points as said shippers may direct; and that, on or before the 9th day of January, 1893, said defendants notify the public accordingly by publication in their tariffs of rates and charges, pursuant to the provisions of section 6 of the Act to Regulate Commerce, and also file copies of said tariffs with this Commission as required by the provisions of said section."

"And said defendants are further hereby directed and required to refund to the several parties legally entitled thereto, within 60 days after notice of this decision and demand thereof by such parties, all sums received by them for the transportation over their respective roads or lines, of the barrel package on shipments of oil in barrels, when the use of tank cars has not been open to shippers impartially and the shipper claiming reparation has been thereby deprived of their use; and inasmuch as the amounts wrongfully received from complainants and others who may be entitled to such reparation cannot be ascertained from the evidence already taken, these proceedings will be continued for such further action or inquiry in that behalf as may become necessary."

On petition filed by the Pennsylvania Railroad Company on February 15, 1893, that defendant was allowed, under a memorandum and order of the Commission of October 19, 1893, to take and file depositions with sole reference to a finding contained on page 11 of our report and opinion of November 14, 1892, which it alleged to be erroneous, and which reads as follows:

"From this state of facts it appears that while about 450 tank cars of the Pennsylvania R. Co. may be 'open to shippers indiscriminately,' it is only upon the conditions of shipment to Com-

munipaw for delivery there to the National Storage Company, and that the facilities owned by this storage company for bulk shipments are not available to shippers in general."

This leave was granted, however, upon certain conditions as to time of notice and filing, and upon the further condition that the petitioning defendant should, prior to the taking of such testimony, publish in its oil tariffs the notification to the public required by our order of November 14, 1892. Said notice was duly published by that company, and the depositions of James A. Hand, William S. Motheral and William H. Joyce, taken on its behalf, were filed. This case and two other cases of the Independent Refiners' Associations (Nos. 153 and 154) were afterwards set for hearing on claims for reparation which had been filed with the Commission under our order of November 14, 1892, and at such hearing the complainants were allowed to rebut the testimony contained in the depositions above-mentioned.

The following appears in the concluding portion of our memorandum herein of October 19, 1893, allowing the Pennsylvania Railroad Company to submit certain further evidence:

"Under existing circumstances, if the Pennsylvania Railroad Company furnishes tank cars to applying shippers to its New York Harbor oil terminal without discrimination, and the facilities at that terminal for the delivery of oil to consignees and bulk steamers are also provided and controlled without discrimination or prejudice as against any shipper or consignee,—and this company declares its ability, and, upon leave being granted, its intention to show this,—we think it is discharging its duty in this respect under the requirements of our order."

While the additional testimony taken on behalf of the Pennsylvania Railroad Company asserts positively that no discrimination whatsoever is practiced between shippers by it, or the Storage Company in charge at Communipaw, in the matter of receiving oil at that point and delivery of oil therefrom to consignees or bulk steamers, still, considered in connection with rebuttal testimony taken at the hearing in Titusville, we are not satisfied that the claiming refiners are, in all respects, upon entirely equal footing with their extremely powerful competitor, the Standard Oil Company or Trust, in shipping export oil through Communipaw. No

evidence has been presented to refute complainants' repeated charge that the National Storage Company is controlled by or affiliated with the Standard Oil Company or Trust, and the testimony is to the effect that the Pennsylvania Railroad Company is required by contract or agreement to deliver oil destined to New York harbor points only at Communipaw and into the possession of the Storage Company, which acts as the carrier's agent at that point. It may be true, as testified, that in the mere carriage and delivery of export oil at Communipaw the carrier is without fault. It may or may not be true that the business of storage, sorting, loading into bulk steamers and other matters shown in this case to have been subsequent to the service of hauling, are matters outside of the business of common carriage by railroad. But the fundamental wrong, if any exists, is found in the railroad company's practice of making a controlling agency at its sole terminal for a large and important traffic of a company whose interests may be identical or largely so with those of a single large shipper, or a combination of large shippers, and consequently antagonize the interests of many smaller and competing shippers. Such an agency may exert a controlling influence upon the treatment of oil during the process of mixing and steamer-loading, and concerning the imposition of sundry extra charges, even though such services are directly performed by others. There is testimony to the effect that charges made for the reception and delivery of oil shipped for export through Communipaw were considerably higher than at Perth Amboy and other points having exporting facilities. The testimony of the witnesses produced by the railroad company presents a contradiction which is also worthy of note. Mr. Hand distinctly testified that the business of the National Storage Company was confined to storage simply, while Mr. Motheral stated in his testimony that considerable quantities of oil had been bought in the oil regions, by a Mr. Owen, for the account of the Storage Company, and that it was consigned to an officer of the Storage Company.

We are not prepared to say, upon the evidence, that the finding on page 11 of our original report was incorrect, but we think that the additional testimony calls for such modification as will take from it the character of a positive finding and make it stand as a summary of evidence. For the words "From this state of



facts it appears," which begin the finding, other words will be substituted, so as to make such statement on page 11 of that report read as follows: "*It is testified, in substance*, that while about 450 tank cars of the Pennsylvania R. Co. may be 'open to shippers indiscriminately,' it is only upon the conditions of shipment to Communipaw for delivery there to the National Storage Company, and that the facilities owned by this storage company for bulk shipments are not available to shippers in general," and to this should be added the words, *but this is denied by witnesses sworn on behalf of said railroad company.*

In relation to methods employed by the Pennsylvania Railroad Company through its oil bureau, which is termed the "Green Line," in furnishing shippers with tank cars from its equipment of 1100 or more, while, in a general sense, the evidence tends to support its claim that such cars are supplied to shippers indiscriminately, we regret that the testimony was not more precise as to the course of the company in furnishing these cars to the claiming shippers, respectively.

We decline to hold, upon the evidence, that the Pennsylvania Railroad Company and its affiliated roads, including the defendant, the Western New York & Pennsylvania Railroad Company, and over which is operated what is called the "Green Line," have been acting in full compliance with our order of November 14, 1892, or that they are exempt from liability to make reparation to claiming shippers for damages under said order. On the other hand, we also decline to decide whether lawful demands are contained in the claims for reparation in this case. It would be unjust to the claimants to exempt carriers from liability under said order, and thereby deprive the claimants of their right of action in the courts, unless the evidence clearly demonstrated that these carriers were, in all respects, acting in conformity with the requirements of such order during the whole period covered by it, which we have fixed in the other cases of the Refiners' Associations as the time between September 3, 1888, and May 15, 1894. It is also plain, from what is above set forth, that the present record does not enable us to determine whether the claims or any portion of them are supported by such facts as would bring them within the terms of our order of November 14, 1892. The situation of the reparation claims in this case,

then, is practically the same as existed at the date when that order was issued. Under the terms of said order, if any of the claimants, members of the complaining associations, can show that the use of tank cars for his shipments of oil over the defendants' roads or by the "Green Line" during the period above-mentioned was denied to him, or that the delivering carrier made this privilege useless to him, through discriminating exactions imposed at the terminal point, he will be entitled to recover that portion of the transportation charges which was applied to the carriage of the barrels. Under the circumstances, the claims in this case require entirely separate investigation; they cannot, as was possible in the other two cases of the Refiners' Associations, be considered together under a general finding that the carriers had no tank cars among their equipment. In this case it is shown that the "Green Line" carriers had at least 1,100 of these cars at their disposal, and it is asserted that not less than 450 of them were devoted to the shipments in question. It results, therefore, that the most we can do in this case is to define the basis of reparation which may be claimed. This has already been done. Our order of November 14, 1892, fixed it at the transportation charge made on the barrel package, and directed that such reparation be made to the parties legally entitled thereto. The claimants have the right, under the procedure provided in section 16 of the statute, to bring suit for enforcement of our order directing reparation in this case, and in any such proceeding they will have full opportunity to state and prove their individual claims. The entry of further order by the Commission in this case appears unnecessary.

RICE, ROBINSON & WITHEROP V. THE WESTERN  
NEW YORK & PENNSYLVANIA RAILROAD COM-  
PANY.

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IN THE MATTER OF REPARATION.

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Complainants having filed a petition for reparation long after decision by the Commission and compliance therewith by the defendant carrier:

*Held*, 1, That the case will not be reopened in a supplementary proceeding, which is only brought to secure reparation, for the purpose of ruling upon questions not decided in the original case. 2, That as to the reparation demanded for injuries which resulted from practices found unlawful in said decision, it would be unwise and unjust to amend a final order entered several years ago and promptly obeyed by the defendant carrier, so as to subject such carrier to further requirements in favor of complainants in respect of violations corrected under said order.

(No. 119.)

*M. J. Heywang* for complainants.

*Frank Rumsey* for defendant.

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REPORT AND OPINION OF THE COMMISSION.

BY THE COMMISSION:

A decision was rendered in this proceeding on December 2, 1888, dismissing the complaint, but the case was reopened by order entered April 15, 1889, on complainants' petition that further evidence be taken in connection with the hearing assigned for other and similar cases at Titusville, Pa., on May 15 following. Said other cases were the foregoing entitled cases brought by the Independent Refiners' Associations of Titusville and Oil City, Pa. After these Independent Refiners' cases had been heard, but before they were decided, the Commission filed its report and opinion and entered an order in this case on September 5, 1890, by which the defendant was directed and required, among other things, to cease and desist from charging for the weight of the barrel in shipments of petroleum oil in carloads from Titusville, Pa., to Buffalo, N. Y. The defendant carrier complied with the requirements of said order

on October 1, 1890. The Commission did not provide in said order for reparation to the complainants, nor was the question reserved for future action. After our decision and order of November 14, 1892, in the Independent Refiners' cases above-mentioned, by which decision and order reparation was awarded to injured parties in those cases, the successors of the complaining firm in this case filed a petition asking that the defendant company, notwithstanding its compliance with the decision rendered herein, be further required to make reparation to complainants, not only for damages resulting from charges on the weight of the barrel, which is the sole subject of reparation claims in the Independent Refiners' case, but on a variety of other grounds specified in the petition for reparation. This petition for a reparation order was filed on March 28, 1893, about two and a half years after our order of September 5, 1890, was complied with by the defendant.

The petitioners appear to have requested the defendant to make reparation some weeks after the decision in September, 1890, and the carrier's compliance therewith on October 1 of that year, and the defendant's counsel seems, by a letter written to counsel for complainants in March, 1891, to have recommended that the matter be submitted to the Commission for adjudication, but that complainants should wait to do so until the disposition by the Commission of the cases brought by the Independent Refiners' Associations. This, however, was mere suggestion; no stipulation of the parties for delay in presenting or deciding a supplemental petition for reparation in this case pending the disposition of other proceedings was ever brought upon the record.

The reparation demanded in the original complaint was for the sum of two thousand, eight hundred and eighty-six dollars and forty-six cents (\$2886.46) with interest to the date of complaint, and was based on the complainants' alleged unlawful charge of 34 cents per barrel of oil carried for complainants from Titusville to Buffalo and the sum of 12 cents a barrel, which complainants alleged was no more than reasonable and which the company received for the haul to Buffalo out of the established through rate on oil from Titusville to Perth Amboy *via* Buffalo. The number of barrels of oil shipped prior to the date of the complaint was stated to be 12,293. Multiplying that number by the difference between

the 34 cent rate and the 12 cent proportion of a rate, above-mentioned, and adding to the product so obtained a "dunnage" expense of \$1.00 per car for 182 cars, required to put such cars in condition for loading barreled oil in tiers, gives a result of two thousand, eight hundred and eighty-six dollars and forty-six cents (\$2886.46) the sum demanded in the complaint. An additional complaint, filed March 10, 1888, sets forth an increase of the rate to Buffalo to 36 cents, and reparation was again prayed for.

The decision of the Commission of September 5, 1890, rested upon grounds not specified in the complaint, but upon discriminations brought out in the testimony and coming within the general allegation of injustice. As above stated, the petition for reparation now under consideration and filed 2½ years after the decision and compliance by the carrier, asks for an award for damages resulting from the various discriminations set forth in and corrected by the report and order, including charges made on the weight of barrels containing oil, and also in regard to one or two matters stated in the opinion, but upon which no decision was rendered.

Upon defendant's compliance on October 1, 1890, with our decision of a month previous, this case had, so far as appeared in the record, been heard, decided and closed. We are not willing to consider this case reopened in this supplementary proceeding, which only concerns reparation, and rule upon questions in the original case which were not disposed of by our decision of September 5, 1890. As to reparation now demanded for damages claimed to have resulted from practices found unlawful by said decision, we think it would be unwise, as a matter of practice, and also unjust to the defendant, to amend the final order entered herein nearly four years ago, and promptly obeyed by that company, so as to subject the carrier to further requirements in favor of these complainants in respect of violations which were corrected under said order.

The supplemental petition for reparation in this case is dismissed.

**E. J. DANIELS V. THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS & NORTHERN RAILWAY COMPANY; THE SIOUX CITY & NORTHERN RAILROAD COMPANY; AND THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.**

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**E. J. DANIELS V. THE GREAT NORTHERN RAILWAY COMPANY; THE SIOUX CITY & NORTHERN RAILROAD COMPANY; AND THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.**

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Complaints filed April 28, 1892.—Answers filed May 5-28, 1892.—Petition of the Chicago, Milwaukee & St. Paul Railway Company for leave to intervene filed October 1, 1892.—Order entered allowing intervention October 8, 1892.—Hearing at Sioux Falls, S. D., May 8, 1892.—Briefs filed July 3 to August 22, 1892.—Decided November 16, 1895.

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1. The word "line" as used in the statute means a physical line, not a mere business arrangement; and carriers are prohibited from charging through rates on traffic over a line formed by connection of two or more roads which are less as a whole than the rates in force on like traffic carried under similar conditions in the same direction over either of the constituent roads in such line.
2. While the share which a carrier receives out of a joint or through rate over a line of which its road is a part is not necessarily the measure of reasonable rates by such carrier for a similar length of haul over its own road, it is proper in any case under the statute to use the aggregate joint or through rate in force over such line as a basis of comparison in determining the legality of rates charged by such carrier over its own road.

3. The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," as used in the statute, imply comparison of relative locations, of natural and acquired advantages, of the reasonableness of charges *per se* and in their relation to other rates on the various lines which serve competing localities, and consideration of all the facts and circumstances which affect rates to different communities.
4. As through traffic from the Atlantic seaboard to Sioux City and Sioux Falls is subjected to the same charges for the haul from Chicago or Duluth as traffic shipped locally from those places to either destination, and as rates from eastern points to Chicago or Duluth do not, in any controlling degree, affect the present controversy, and are not assailed by the complainant, it was unnecessary to make the eastern carriers parties to this proceeding.
5. Complaints, though brought in the name of an individual, may challenge the entire schedule of rates to competing towns, and such cases, as distinguished from those involving individual grievances only, are peculiarly public in their nature, since they embrace in one proceeding the various business and industrial interests centered in cities and towns, as those interests may be affected by the charges of public carriers whose facilities are employed in the interchange of commerce.
6. The law requires regulation of railroad charges according to the ascertained rights of persons and places; it is not an agency for the regulation of trade by enabling shippers and communities to do business, or putting them on even terms with rivals more remote from competitive territory. Therefore, the fact that one town is able, under existing rates to and from that point, to compete with another town on practically even charges for the aggregate in and out transportation, cannot be regarded as an excuse for any injustice in the rates to the former town; the rates to the two competing towns should accord with their relative situation.
7. Ordinarily the rate per ton per mile diminishes with increasing length of haul, and it does not follow that Sioux Falls rates from Chicago should be 108 per cent of Sioux City rates because the short line distance from Chicago to Sioux Falls is 108 per cent of the short line distance to Sioux City.
8. A given relation in rates between competing towns, fairly equitable at the time of its adoption, may become, through business development and other changes in conditions, severely prejudicial to the town taking the higher schedule; and this is especially liable to occur when, additional lines of communication having been opened up to the latter locality, all the roads reaching that point agree to continue the old relation of rates to such points, notwithstanding its improved situation. Agreements between carriers, though designed to secure the orderly and lawful operation of the roads cannot be permitted to fasten upon neighboring localities a relation of rates which is unnatural or unjust. The "basing point" method of rate making, to the extent it is now employed, believed to be unnecessary to an adequate scheme of tariff construction.

9. Where carriers have maintained for a considerable period a relation of rates affecting an extensive territory, though somewhat more favorable to one community therein than appears to be justified, and commercial conditions there and elsewhere have become measurably dependent upon the continuance of that relation, it would ordinarily be inexpedient to increase rates at that point as the means of correcting relative injustice to another locality; in such case the only practicable remedy is to reduce the rates to the injured town.
10. The relative equality enjoined by the statute requires substantial modification of the present disparity in rates from Chicago to Sioux City and Sioux Falls, and under present conditions such disparity in rates from Duluth to Sioux City and Sioux Falls should be discontinued.

(No. 336, 337.)

*McMartin & Carland* for complainant.

*W. P. Clough* for the Great Northern Railway Company.

*T. S. Wright* and *S. K. Tracy* for the Chicago, Rock Island & Pacific Railway Company.

*Wright & Hubbard* for the Sioux City & Northern Railroad Company.

*John T. Fish* for the Chicago, Milwaukee & St. Paul Railroad Company.

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REPORT AND OPINION OF THE COMMISSION.

**KNAPP, Commissioner :**

The complaint in the first above-entitled case alleges: 1st. That the rates charged by the defendants, the Chicago, Rock Island & Pacific Railway Company and the Burlington, Cedar Rapids & Northern Railway Company, for the transportation of the various classes of freight from Chicago, Ill., to Sioux Falls, S. D., from September 22, 1890, to February 14, 1891, were the same as the rates charged by said railway companies and the other defendant, the Sioux City & Northern Railroad Company, from Chicago to Sioux City, Ia., but that on said last mentioned date



the rates to Sioux Falls were increased so that freight charges from Chicago to these two cities became and up to the date of complaint remained as follows, viz.:

*Chicago to Sioux Falls.*

Classes	1	2	3	4	5	A	B	C	D	E
Rates	81	65	45	32	27	32	27	22	19	17

*Chicago to Sioux City.*

Classes	1	2	3	4	5	A	B	C	D	E
Rates	75	60	42	30	25	30	25	20	17½	16

2d. That the distance over said connecting roads from Chicago to Sioux Falls is at least 60 miles less than the distance over the said connecting line from Chicago to Sioux City.

3d. That said rates to Sioux Falls are unreasonable and unjust; and that the relative charges from Chicago to Sioux Falls and Sioux City, respectively, subject complainant and others doing business at Sioux Falls to unjust discrimination and unreasonable prejudice and disadvantage, and make and give undue preference and advantage to Sioux City and merchants and dealers in that locality.

There is also an allegation in the complaint that these rates are in violation of law, in that they are less for longer than for shorter distances, but this contention, so far as it has reference to the fourth section of the Act, was virtually abandoned at the hearing.

Each of the defendants answered the complaint. They admit that they are engaged in the transportation of property from Chicago to Sioux Falls and Sioux City, and that the rates maintained were and are as alleged by complainant; but they severally deny that said rates or either of them contravene any provision of the law. It is further averred in the answers that the distance to Sioux City is greater than to Sioux Falls only over these defendant roads; that by all other lines Sioux City is at a less distance from Chicago than Sioux Falls, and that rates to Sioux City are controlled by the short line from Chicago to that point.

The defendant, the Chicago, Rock Island & Pacific Railway Company, filed an amendment to its answer, in which the additional averment is made that the line from Chicago to Sioux

Falls, composed of its road and that of the Burlington, Cedar Rapids & Northern, is a separate and distinct line from the line between Chicago and Sioux City composed of said roads and that of the other defendant, the Sioux City & Northern Railroad Company, "and this defendant submits that the provisions of the Act to Regulate Commerce do not apply to said condition of affairs." The Burlington, Cedar Rapids & Northern also filed a similar amendment to its answer, alleging that, as to Sioux City business, it is an intermediate carrier and can in no manner fix or determine the rates between Chicago and Sioux City, and that the provisions of the Act do not apply to it in the matter complained of.

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The second-named case relates to rates for freight transportation from Duluth, Minn., to Sioux Falls and Sioux City, and the complaint contains the same statement of rates, and alleges the same violations of law by the defendants therein, the Great Northern and Sioux City & Northern Railroad Companies, as are set forth in the complaint in the other case. The answers of these defendants admit that Sioux Falls is nearer to Duluth than Sioux City, but deny any violation of the Act in the respect charged by complainant.

The answer of the Great Northern further avers that, while it does establish rates from Duluth to Sioux Falls, it does not make the rates from Duluth to Sioux City; that the tariff of rates *via* its road from Duluth to Sioux City is a joint tariff between it and the Sioux City & Northern, a road over which it has no control; that the rate to Sioux Falls is the same as that made by its competitors from common points, and the rate to Sioux City is the same as from Chicago to Sioux City; that the Chicago roads name the rates, and the joint rates of defendants must be the same as those made by roads leading from Chicago or else defendants must abandon the business; and that all freight shipped by complainant *via* Duluth originates, as defendant is informed and believes, at eastern points, from which, to Sioux Falls, there are competing all rail or lake and rail lines of transportation. The Sioux City & Northern sets up the further defense of a competing shorter line,

the Chicago, St. Paul, Minneapolis & Omaha, from Duluth to Sioux City.

The Chicago, Milwaukee & St. Paul Railway Company having submitted a petition for leave to intervene as a party defendant in these cases, such intervention was allowed, and that company thereupon filed an answer to each complaint, such answers being substantially the same as those filed by the original defendants.

It was agreed that both cases should be heard together, and they may be properly disposed of in one report. The material facts ascertained are stated as follows:

#### FACTS.

1. Sioux Falls, S. D., and Sioux City, Ia., are rival distributing points situated about 90 miles apart. Merchants in each locality compete for the wholesale trade of various places in South Dakota, in a small portion of northwestern Iowa, and also at a few points in Minnesota. Sioux Falls contains about 12,000 inhabitants. The population of Sioux City is stated to be 45,000, and the volume of its wholesale business is much greater than that of Sioux Falls. The amount of freight transported between Chicago and Sioux City, in either direction, is largely in excess of the amount carried between Chicago and Sioux Falls.

2. The transportation of freight from Chicago or Duluth to Sioux Falls or Sioux City, over all lines between those places, is by continuous carriage through different states; the shipments are governed by through bills of lading, and but one charge is made for the service rendered.

Prior to September 22, 1890, rates from Chicago to the two places were as follows:

#### *Chicago to Sioux City and Sioux Falls.*

(Rates in cents per 100 pounds.)

Classes	1	2	3	4	5	A	B	C	D
To Sioux City	70	58	42	28	21	28	.23	18	16
To Sioux Falls	76	63	45	30	23	30	25	19½	17

These rates were also in effect from Duluth to Sioux City and Sioux Falls.

The rates in effect from Chicago to Sioux Falls were the same, from September 22, 1890, to February 14, 1891, as those in force from Chicago to Sioux City, to wit:

*September 22, 1890, to January 1, 1891.*

(In cents per 100 pounds.)										
Classes	1	2	3	4	5	A	B	C	D	E
Rates	70	58	42	28	21	28	23	18	16	15

*January 1, 1891, to February 14, 1891.*

Rates	75	60	42	30	25	30	25	20	17½	16
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On the 14th of February, 1891, the rates to Sioux Falls were increased so that on and after said date the relation of rates from Chicago to the two places was as follows:

*Chicago to Sioux City and Sioux Falls.*

(Rates in cents per 100 pounds.)										
Classes	1	2	3	4	5	A	B	C	D	E
To Sioux City	75	60	42	30	25	30	25	20	17½	16
To Sioux Falls	81	65	45	32	27	32	27	22	19	17

These charges continued in effect until July 1, 1894, when the following advanced rates were put in force by the carriers from Chicago:

*Chicago to Sioux City and Sioux Falls.*

(Rates in cents per 100 pounds.)										
Classes	1	2	3	4	5	A	B	C	D	E
To Sioux City	80	65	45	32	27	32	27	22	18½	16
To Sioux Falls	86	70	49	34½	29	34½	29	24	20	17

The rates above shown are still in effect.

The following table shows the differences in rates from Chicago to Sioux City and Sioux Falls before September 22, 1890, when the rates were made the same, on and after February 14, 1891, when Sioux Falls rates were increased, and since July 1, 1894:

*Differences in Rates from Chicago in favor of Sioux City and against Sioux Falls.*

Classes	1	2	3	4	5	A	B	C	D	E
Before September 22, 1890	6	5	3	2	2	2	2	1½	1	1
Between September 22, 1890, and February 14, 1891	0	0	0	0	0	0	0	0	0	0
On and after February 14, 1891	6	5	3	2	2	2	2	2	1½	1
Since July 1, 1894	6	5	4	2½	2	2½	2	2	1½	1

When Sioux Falls and Sioux City rates were made the same from Chicago on September 22, 1890, corresponding rates were put in force from Duluth on September 29th, a week later. The increase in rates to Sioux Falls, which occurred in February, 1891, was put in force over the Duluth lines on the 9th and over the Chicago routes on the 14th of that month. The more recent increase to both Sioux City and Sioux Falls was made effective from Chicago on July 1, 1894, and from Duluth on July 25th, twenty-four days later.

During the period between July 1 and July 25, 1894, (after the advance from Chicago and before the advance from Duluth) the Sioux Falls dealer could obtain goods from eastern cities by the route through Duluth at practically the same rates as those in effect at the same time from eastern cities to Sioux City over routes through Chicago.

This is shown by the following statement of rates from Duluth and Chicago during this period of 24 days:

(Rates in cents per 100 pounds.)

Classes	1	2	3	4	5	A	B	C	D	E
Chicago to Sioux City	80	65	45	32	27	32	27	22	18½	16
Duluth to Sioux Falls	81	65	45	32	27	32	27	22	19	17

During the lake season of 1894 the same proportional rates were in effect from the East over lake and rail routes to Duluth and Chicago on business destined to Sioux City and Sioux Falls and other points in that section. Proportional rates do not appear to have been revived or used for business to these places over lake and rail routes to Duluth or Chicago, except in a tariff issued by the Fitchburg road, and applying on traffic from Boston and other points in that section. This tariff allowed proportional rates on Sioux Falls freight, but not on Sioux City business. An amendment of June 1, 1895, so changed the terms of the original tariff as to give Sioux City the proportional rating to Duluth, and excludes Sioux Falls from any participation therein. The general withdrawal of such proportional rates to Chicago and Duluth resulted in a combination of rates to and from Duluth on Sioux Falls traffic which is so much higher than the combination of rates

from the east to Chicago and from Chicago to Sioux Falls as to preclude any idea of competition by the Duluth route for traffic destined to Sioux Falls. Leaving the Fitchburg tariff out of consideration, the present combinations of lake and rail rates *via* Chicago and Duluth to Sioux City and Sioux Falls are as follows:

To	<i>Via Chicago</i>					<i>Via Duluth</i>				
	Classes					Classes				
	1	2	3	4	5	1	2	3	4	5
Sioux City	134	112	82	59	50	170	140	103	73	61
Sioux Falls	140	117	86	61½	52	176	145	107	75½	63

Rates to Sioux Falls from Chicago and Duluth have been increased considerably during the past four years. Using the first class rate for the purpose of illustration, it appears to have been 76 cents prior to September 22, 1890; 70 cents from that date to January 1, 1891; 75 cents during January and part of February, 1891; 81 cents from February 14, 1891, to July 25, 1894, and 86 cents since the date last mentioned. This shows an increase of 16 cents, or nearly 23 per cent, over the lowest rate in force at any time during that period, and an advance of 10 cents, or over 13 per cent, above the rate in force prior to September 22, 1890.

The Illinois Central, against the opposition of the other lines, appears to have insisted upon the change which took place in September, 1890, by which both Sioux Falls and Sioux City received the same rates, and that company consented in February, 1891, to the increase in rates to Sioux Falls, by which the old relation of rates was re-established, though upon a considerably higher scale of charges than that which existed before the reduction in September of the previous year.

It does not appear that any marked disturbance in freight rates was occasioned by granting the Sioux City rate to Sioux Falls in 1890, whatever may have been the reason for that action. Sheldon, Ia., 493 miles from Chicago, on the Chicago, Milwaukee & St. Paul Ry., has had the Sioux City rate for some years. The reduced rates granted to Sioux Falls in 1890 necessitated a reduction of from two cents on fifth class to six cents on first class to places between that town and Sheldon; rates to the north and west of Sioux Falls were also scaled down a little at that time, and this was fol-

lowed by a re-adjustment of rates from Lake Superior points and from St. Paul on the basis of the reduction made from Chicago.

3. The rates from Chicago, Milwaukee and Duluth to Missouri River points have generally been uniform, with perhaps a few exceptions, lake and rail rates from the east to Lake Superior ports, on business destined beyond, have been, up to the season beginning in April, 1895, substantially the same as rates to ports on Lake Michigan on traffic carried to interior destinations.

The accompanying tables show present tariff rates on classes 1 to 5 inclusive, to Sioux City and Sioux Falls from Chicago, Milwaukee, and Duluth; and from New York to the same points *via* all rail and lake and rail through Chicago, Milwaukee, Duluth and St. Paul:

*To Sioux City, Ia.*

*To Sioux Falls, S. D.*

FROM	1	2	3	4	5	Classifica- tion.	1	2	3	4	5	Classifica- tion.
<i>New York:</i>												
All rail to												
Chicago, Ill..	75	65	50	35	30	O. C.	75	65	50	35	30	O. C.
Beyond .....	80	65	45	32	27	W. C.	86	70	49	34½	29	W. C.
	155	130	95	67	57		161	135	99	69½	59	
<i>Lake &amp; Rail:</i>												
To Chicago,												
Ill., or Mil-												
waukee, Wis..	54	47	37	27	23	O. C.	54	47	37	27	23	O. C.
Beyond .....	80	65	45	32	27	W. C.	86	70	49	34½	29	W. C.
	134	112	82	59	50		140	117	86	61½	52	
<i>All Rail:</i>												
Via Soo Line												
to St. Paul...	125	107	84	56	46	O. C.	125	107	84	56	46	O. C.
Beyond .....	60	50	35	27	20	W. C.	60	50	36	26½	21½	W. C.
	185	157	119	83	66		185	157	120	82½	67½	

NOTE.—O. C., Official Classification. W. C., Western Classification.

Articles in the same class in both classifications would take total rates as shown above.

*To Sioux City, Ia.**To Sioux Falls, S. D.*

FROM	1	2	3	4	5	Classifica- tion.	1	2	3	4	5	Classifica- tion.
<i>New York:</i>												
Lake & Rail												
to Duluth ....	90	75	58	41	34	O. C.	90	75	58	41	34	O. C.
Beyond .....	80	65	45	32	27	W. C.	86	70	49	34½	29	W. C.
	170	140	103	73	61		176	145	107	75½	63	
<i>All Rail:</i>												
To Duluth.	125	107	84	56	46	O. C.	125	107	84	56	46	O. C.
Beyond .....	80	65	45	32	27	W. C.	86	70	49	34½	29	W. C.
	205	172	129	88	73		211	177	133	90½	75	
<i>Lake &amp; Rail:</i>												
Via Duluth												
to St. Paul....	104	89	71	48	39	O. C.	104	89	71	48	39	O. C.
Beyond .....	60	50	35	27	20	W. C.	60	50	36	26½	21½	W. C.
	164	139	106	75	59		164	139	107	74½	60½	

NOTE.—O. C., Official Classification. W. C., Western Classification.

Articles in the same class in both classifications would take total rates as shown above.

The all rail proportional rates from the east to Chicago on traffic carried beyond were, prior to April 1, 1895, from 1 to 5 cents less than the straight rates to Chicago which, through discontinuance of proportional rates, are now applied on freight when carried beyond to Sioux City, Sioux Falls, and other points in that section, as well as when consigned to Chicago:

*All Rail Rates from New York to Chicago.*

Classes.....	1	2	3	4	5
Straight rates.....	75	65	50	35	30
Former proportional rates on traffic going beyond.....	70	61	47	33	29
Difference.....	5	4	3	2	1

The lake and rail proportional rates from New York and other eastern points on traffic destined through either Chicago or Duluth to Sioux City or Sioux Falls were, as heretofore found, withdrawn at the close of the season of 1894. This resulted in raising the lake and rail rate on such traffic to and through Chicago three cents on first and second classes, two cents on third



and fourth classes, and one cent on fifth class. Such increase on this traffic to Sioux Falls through Duluth amounted to from 12 to 39 cents. The following table shows the former lake and rail proportional rates from New York to Chicago and Duluth and the straight rates which now apply on business carried through these points to Sioux Falls:

## LAKE AND RAIL.

	<i>To Chicago.</i>					<i>To Duluth.</i>				
Classes.....	1	2	3	4	5	1	2	3	4	5
Straight rates.....	54	47	37	27	23	90	75	58	41	34
Former proportional rates										
on traffic to Sioux Falls.	51	44	35	25	22	51	44	35	25	22
Difference.....	3	3	2	2	1	39	31	23	16	12

Under present rates, traffic of any class from New York and other eastern points to Sioux Falls, *via* all rail or lake and rail transportation, finds the route through Chicago far less expensive. It is now much cheaper to send goods from the east to Sioux Falls by all rail carriage through Chicago than by lake and rail through Duluth. The lake and rail rates from New York through Duluth to Sioux Falls are, except on class 3, higher than the lake and rail rates through Duluth and *St. Paul* to Sioux City, and on class 3 the rates are the same by both lines of transportation. These comparisons are necessarily based upon articles taking the same class in both the Official and Western Classifications.

4. The following table shows routes and distances *via* all lines from Chicago, Milwaukee, Duluth and *St. Paul* to Sioux City and Sioux Falls, respectively:

*Chicago to Sioux City.*

	MILES.
Chicago, Milwaukee & St. Paul Ry.....	517
*Illinois Central R. R.....	510
Chicago & Northwestern Ry. to Onawa.....	480
Sioux City & Pacific R. R. to Sioux City.....	37
	— 517

Chicago & Northwestern Ry. to Mankato.....	435	
Chicago, St. Paul, Minneapolis & Omaha Ry. to Sioux City .....	184	
		619
Chicago, Burlington & Quincy to Clinton.....	147	
Burlington, Cedar Rapids & Northern R. R. to Lester	384	
Sioux City & Northern R. R. to Sioux City.....	73	
		604
Chicago, Rock Island & Pacific Ry. to W. Liberty..	222	
Burlington, Cedar Rapids & Northern R. R. to Lester	328	
Sioux City & Northern R. R. to Sioux City.....	73	
		623
<i>Chicago to Sioux Falls.</i>		
Chicago, Milwaukee & St. Paul Ry.....		554
*Illinois Central R. R.....		547
Chicago, Rock Island & Pacific Ry. to W. Liberty..	222	
Burlington, Cedar Rapids & Northern R. R. to Sioux Falls.....	352	
		574
Chicago, Burlington & Quincy R. R. to Clinton....	147	
Burlington, Cedar Rapids & Northern R. R. to Sioux Falls.....	408	
		555
Chicago & Northwestern R. R. to Mankato.....	435	
Chicago, St. Paul, Minneapolis & Omaha to Sioux Falls	155	
		590
*The short line.		
<i>Milwaukee to Sioux City.</i>		
*Chicago, Milwaukee & St. Paul Ry.....		536
Chicago & Northwestern Ry. to Mankato.....	378	
Chicago, St. Paul, Minneapolis & Omaha to Sioux City	184	
		562
*The short line.		
<i>Milwaukee to Sioux Falls.</i>		
*Chicago, Milwaukee & St. Paul Ry.....		510
Chicago & Northwestern Ry. to Mankato.....	378	
Chicago, St. Paul, Minneapolis & Omaha Ry. to Sioux Falls.....	155	
		533

*Duluth to Sioux City.*

Chicago, St. Paul, Minneapolis & Omaha Ry.....	446
*Great Northern Railway to Garretson.....	326
Sioux City & Northern Railroad to Sioux City.....	97
	<hr/> 423

*Duluth to Sioux Falls.*

Chicago, St. Paul, Minneapolis & Omaha Ry.....	417
*Great Northern Ry.....	345

*St. Paul to Sioux City.*

Great Northern Railway.....	327
*Chicago, St. Paul, Minneapolis & Omaha Ry.....	270

*St. Paul to Sioux Falls.*

Great Northern Ry. Line.....	249
*Chicago, St. Paul, Minneapolis & Omaha Ry.....	241

\*The short line.

The practicable routes from the eastern seaboard to Sioux City and Sioux Falls are *via* any of the numerous lines connecting the east with Chicago and Milwaukee, in connection with the lines west of those points which are named in the foregoing table of distances; also *via* Canadian Pacific Ry., "Soo Line" and St. Paul; also *via* the lake lines, namely: The Northern Steamship Company, the Lake Superior Line, and the Erie & Western Transportation Company to Duluth, in connection with the rail lines west of that point hereinbefore mentioned.

5. The foregoing table of routes and distances shows that the short line distance from Chicago both to Sioux City and Sioux Falls is *via* the Illinois Central R. R., the distance to Sioux City by that line being 510 miles, and to Sioux Falls 547 miles. The short line distance from Milwaukee to both points is *via* the Chicago, Milwaukee & St. Paul Ry., the distance to Sioux City being 536 miles and to Sioux Falls 510 miles. The short line distance from Duluth to Sioux Falls is *via* the Great Northern Ry., and from Duluth to Sioux City *via* the Great Northern and Sioux City & Northern, the distance to Sioux City being 423 miles and to Sioux Falls 345 miles. The distance from Chicago to Sioux Falls *via* the Illinois Central R. R., is practically 108 per cent of the distance from Chicago to Sioux City by that line,

and the rates *via* all lines from Chicago to Sioux Falls were prior to Sept. 22, 1890, and since February 14, 1891, have been, substantially 108 per cent of the rates from Chicago to Sioux City, the difference in rates to these points corresponding with the difference in distance by the shortest line. The rates from Milwaukee and Duluth to Sioux Falls *via* all lines were and are also 108 per cent of the rates from Milwaukee and Duluth to Sioux City, being the same as the rates from Chicago to those places.

Although the short line distance from Chicago is less to Sioux City than to Sioux Falls, as above indicated, the short line (Great Northern) distance from Duluth is about 78 miles *less to Sioux Falls than to Sioux City*. The Great Northern is operated through a sparsely settled section of the country. As to Sioux Falls traffic by that line, it appears that during 1892—this road's best year prior to the hearing—the average daily traffic to Sioux Falls was less than two carloads, and the shipments out less than one third of a carload.

6. It further appears that local rates from Sioux Falls and Sioux City, except as otherwise fixed by the Iowa Commission, are the same in proportion to distance from both these towns, though the exact basis of such rates out of Sioux Falls and Sioux City, and other distributing points in that section, is not disclosed by the evidence nor does it appear upon examination of the tariffs on file with the Commission.

It seems, however, to be conceded by complainant that local rates *out* of Sioux Falls and Sioux City, except to points in the southeastern part of South Dakota, are not improperly adjusted, the main grievance and cause of complaint being the fact that rates *to* Sioux Falls, both from Duluth and from Chicago, are 8 per cent higher than rates from those places to Sioux City.

7. As the rates out of Sioux City and out of Sioux Falls are on the same scale per mile, and as rates *in* from Chicago, Milwaukee and Duluth are 8 per cent higher to Sioux Falls than to Sioux City, it is contended by complainant that Sioux Falls cannot compete with Sioux City in the territory adjacent to both towns, except at points where, by a combination of rates *in* and rates *out*, the shorter distance from Sioux Falls makes the aggregate charge sufficiently low to overcome the lower cost of transporta-

tion to Sioux City. The defendants, on the other hand, claim that, in the section of country properly tributary to Sioux Falls, the merchants of that place have all, and more than all, the advantages to which they are entitled, because of the same mileage rates as Sioux City on outgoing freight and the greater proximity of Sioux Falls to the competitive territory. So far as this competitive territory lies north and west of Sioux City, and a large part of it appears to be so situated, Sioux Falls enjoys the advantage of more favorable location.

Some indication of the extent to which Sioux Falls is able, under present rates, to compete with distributing points further north, such as Aberdeen, for instance, is shown by the testimony of complainant's witness, a member of a grocery firm doing business both at Sioux Falls and Aberdeen. With these two houses, he said, "we cover practically the whole state. From the Sioux Falls house we cover the entire south half of the state, to the southwest corner of Minnesota and a little in Iowa."

The principal competition which Sioux Falls meets, in the distribution of products through the territory above mentioned, comes from merchants at Sioux City. Under existing rates in and out, Sioux Falls can meet that competition on practically an even basis at all points in South Dakota on and south of the Iowa and Dakota division of the C. M. & St. P. Ry., except at points in the southeastern corner of that State. North of that division, Sioux Falls, by reason of nearer distance, appears to have an advantage in rates over Sioux City and other distributing points until the east and west line of the Chicago & Northwestern road, running through Sioux Valley, Huron, and Pierre, is reached. Above that line Sioux Falls encounters the trade of Aberdeen, Watertown, Minneapolis, and St. Paul.

The line of the C. M. & St. P. Ry., between Sioux City and Sioux Falls, passes in and out of the State of Iowa three or four times, so that rates from Sioux City to Beloit, Iowa, and to intermediate points are fixed according to the tariff prescribed by the Iowa State Commission.

The distance between Sioux City and Sioux Falls by this line is 91 miles. Hawarden, located 46 miles from Sioux City, is about half way between the two places. Beloit is 68 miles from Sioux City and 33 miles from Sioux Falls. Canton is 71 miles from Sioux City and 20 miles from Sioux Falls.

The rate on first class goods from Sioux City to Hawarden is 21 cents, while from Sioux Falls to Hawarden the rate is 29 cents. The same rates apply to Calliope, which is about a mile north of Hawarden. The Sioux City rate to Beloit is only 28 cents for 68 miles, while the Sioux Falls rate to Beloit is 22 cents for 33 miles. The Sioux City rate to Canton is 33 cents for 71 miles, and the Sioux Falls rate is 20 cents for 20 miles.

Under this adjustment first-class articles purchased at Chicago and distributed to these points through Sioux City and Sioux Falls respectively would take the following rates for the whole distance from Chicago:

Hawarden and Calliope through Sioux City, \$1.01; through Sioux Falls, \$1.115; Beloit through either Sioux City or Sioux Falls, \$1.08; Canton through Sioux City, \$1.13; Canton through Sioux Falls, \$1.06.

Taking the Sioux City and Sioux Falls division of the Chicago, Milwaukee & St. Paul road as a basis, Sioux Falls is unable to compete on even terms with Sioux City in the extreme southeastern portion of South Dakota below a line drawn easterly and westerly through Beloit, which, as above stated, is 33 miles from Sioux Falls and 68 miles from Sioux City. As to points upon the Sioux City and Dakota division of the Chicago, Milwaukee & St. Paul road, Sioux City has the advantage of nearer distance and less rates until Scotland junction is reached. The distance from Sioux Falls and Sioux City to Scotland is about the same, and distributing rates to points west of Scotland on this division are nearly the same from both places; but the higher rates into Sioux Falls make it impossible for that place to compete on even terms with Sioux City for the trade of those points.

8. On January 9, 1894, the Joint Tariff under which the Rock Island, Cedar Rapids, and Sioux City & Northern roads carried traffic between Chicago and Sioux City was withdrawn. The Rock Island does, however, transport traffic to Sioux City in connection with other roads. The intervening defendant, the Chicago, Milwaukee & St. Paul, reaches Sioux City and Sioux Falls over its own lines from Chicago and other points.

#### CONCLUSIONS.

The defendants suggest in their answers and distinctly raise in their brief an important question of law founded on the decisions

of the Eighth Circuit Court of Appeals in the cases of *Chicago & N. W. R. Co. v. Osborne*, 4 Inters. Com. Rep. 257, 52 Fed. Rep. 912, and *Tozer v. United States*, 4 Inters. Com. Rep. 245, 52 Fed. Rep. 917. It is contended on behalf of the original defendants in the case relating to rates from Chicago, that while the Rock Island, Cedar Rapids, and Sioux City & Northern roads make rates to Sioux City, only two of them—the Rock Island and the Cedar Rapids—make rates to Sioux Falls; that two separate and independent lines are thereby formed, *viz.*, one from Chicago to Sioux City, the other from Chicago to Sioux Falls; and that rates over these independent lines cannot be compared in a case where the lawfulness of either rate is questioned. A similar situation exists in the carriage from Duluth. The Great Northern carries over the whole distance from Duluth to Sioux Falls, while traffic from Duluth to Sioux City is carried by that road in connection with the Sioux City & Northern.

The cases above mentioned apparently hold that the rate of an individual road cannot properly be compared with a rate jointly made by that road and another connecting carrier. The facts in those cases, however, as they are disclosed in the reported opinions, did not require the affirmance of this proposition in order to sustain the conclusions therein reached, since in each of them a local or individual rate of one road was, so it is stated, *sought to be compared with the division received by that road out of a joint or through charge*. The court held that this comparison was improper, and in doing so followed the rule laid down by the United States Supreme Court in the case of *Union Pac. R. Co. v. United States*, 117 U. S. 355, 29 L. ed. 920. But the court of appeals went further *and held that individual and aggregate joint rates apply over separate lines and cannot be compared*. It is quite probable that the attention of the court was not called to the difference between using, as the basis of comparison, a division or share of a joint rate—which may be erroneous—and using for such basis a total or aggregate joint charge, which seems clearly legitimate if not indispensable to the proper adjustment of relative rates between different localities. We are disposed to regard this apparently inadvertent expansion of an adjudged principle into an untenable theory as dictum only, and feel convinced that the court itself will recognize the distinction at the first suit-

able opportunity. The "separate line" doctrine upon which the defendants rely has, moreover, recently been the subject of consideration by an appellate court of equal authority, the Circuit Court of Appeals for the Fifth Judicial Circuit, where the decision of the court below, which had this separate line theory for one of its main foundations, was reversed and the case remanded with instructions to grant the relief which the trial court had denied. *Interstate Commerce Com. v. Cincinnati, N. O. & T. P. R. Co.* 4 Inters. Com. Rep. 582. In the Act of June 15, 1866, Congress used the word "line" in the sense of a physical structure; and the word is also defined to mean a "physical line" in the debates in Congress when the fourth section of the Interstate Commerce Act was under discussion. Under the fourth section of that law, two or more connected roads may charge rates which aggregate less than the sum of the local rates of the constituent roads, but not less than either of such locals; and this accords with the principle on which an individual road makes rates to its different stations—rates for a given distance, while not less as a whole than any intermediate rate, not being ordinarily the sum of rates in force between intermediate stations. *Martin v. Chicago, B. & Q. R. Co.* 2 Inters. Com. Rep. 32, 2 I. C. C. Rep. 25. The word "line" in the fourth section of the statute was early construed by the Commission to mean, "a physical line, not a mere business arrangement." *Boston & A. R. Co. v. Boston & L. R. Co.* 1 Inters. Com. Rep. 571, 1 I. C. C. Rep. 158.

The decisions in *Chicago & N. W. R. Co. v. Osborne*, 4 Inters. Com. Rep. 257, 52 Fed. Rep. 912, and *Tozer v. United States*, 4 Inters. Com. Rep. 245, 52 Fed. Rep. 917, were fully discussed by the Commission in its Sixth and Seventh Annual Reports to Congress. The Osborne case was a long and short haul proceeding, and the decision in the Tozer case, which related to an alleged undue preference, adopted the line theory announced in the Osborne case. But the language of the third section is not limited, as it is in the fourth section, to transportation "over the same line," and, therefore, the doctrine which denies comparison of individual with total or aggregate joint rates over the same line, or over different lines in the same territory, is not necessarily controlling in a case under the third section. By that section the carrier subject to the Act is not merely enjoined from giving any



undue or unreasonable preference or advantage; the section also contains a separate prohibition against subjecting any person or locality, or any description of traffic, to any undue or unreasonable prejudice or disadvantage *in any respect whatsoever*; while the first section of the Act requires all rates to be just and reasonable. In determining whether any rate or set of rates is unjust or unreasonable, and whether any person, locality, or kind of traffic is thereby subjected to undue or unreasonable prejudice or disadvantage, it seems entirely appropriate to take into consideration all the facts and circumstances which bear upon the relation of rates to different communities. When Congress enacted that one locality should not have undue preference in rates or facilities over another locality, or be subjected to any unreasonable prejudice or disadvantage, it opened the door for and made material any evidence which tends to throw light upon the question of undue preference or prejudice. These terms imply comparison of relative locations, of natural and acquired advantages, of the reasonableness of charges *per se* and in their relation to other rates on the various lines which serve the competing localities. *Eau Claire Board of Trade v. Chicago, M. & St. P. R. Co.* 4 Inters. Com. Rep. 65, 5 I. C. C. Rep. 264; *Raymond v. Chicago, M. & St. P. R. Co.* 1 Inters. Com. Rep. 627, 1 I. C. C. Rep. 230; *Boards of Trade Union v. Chicago, M. & St. P. R. Co.* 1 Inters. Com. Rep. 608, 1 I. C. C. Rep. 215. To compare one rate with the *proportion* of another rate is quite a different thing from comparing one rate with the *whole* of another rate, and it does not follow that the latter comparison is to be excluded because the former is inadmissible. The fourth section provides for comparison of aggregate rates over the same line; and in the view of Congress, as we believe, the physical connection of two or more roads, which unite in carrying traffic under joint tariffs, constitutes an extended "line," of which each road forms a part. In such case there is a prohibition against through rates over the entire line which are less as a whole than the rates in force over either of the constituent parts of that line. However this may be for the purposes of the fourth section, we hold that it is immaterial, under the first section or the third section of the Act, whether the carriers complained of operate the same or different lines. In our judgment, therefore, the separate and independent line theory is untenable.

so far at least as it denies the propriety of comparing the total charges applied to localities situated and served as are the towns now in question, and the contention of the defendants upon this point cannot be sustained.

Nor is there any force in the objection that the lines east of Chicago and Duluth were not made parties to these proceedings. Through traffic from the Atlantic seaboard to Sioux City and Sioux Falls is subjected to the same charges for the haul from Chicago or Duluth as traffic shipped locally from those places to either destination. The reasonableness of the rates from eastern points to Chicago and Duluth respectively is not assailed by the complainant, nor do those rates in any controlling degree affect the present controversy. The unlawfulness alleged in these cases relates wholly to the charges from Chicago and Duluth, whether the traffic originates at those points or reaches them over the various routes from the east. It was unnecessary, therefore, to include the eastern lines as parties defendant.

For reasons satisfactory to themselves, the original defendants in the Chicago case, the Rock Island, the Cedar Rapids, and the Sioux City & Northern, have, since the hearing, withdrawn their joint tariff from Chicago to Sioux City. The two roads first named, however, continue to carry traffic to Sioux Falls, the complaining locality, and the intervening defendant, the Chicago, Milwaukee & St. Paul Ry. Co., reaches and serves both places over its own rails. The withdrawal by the original defendants in the Chicago case of their joint tariff to Sioux City does not, therefore, materially affect the determination of these proceedings.

The fact that Sioux Falls is able, under existing rates to *and from* that place, to compete with Sioux City on practically even charges for the aggregate in and out transportation, except for the trade of towns in the extreme southern and southeastern portion of South Dakota and neighboring districts in Iowa, cannot be regarded as an excuse for any injustice in the rates to Sioux Falls. The law requires such equitable relations in rates as accord with the situation of shippers and communities, not merely such as will enable them to do business or put them on even terms with rivals more remote from the competitive territory. A contrary construction would interpret the statute as an agency for the regulation of trade, instead of a law for the regulation of rail-

road charges according to the ascertained rights of persons and places. It is conceded by complainant that local rates out of Sioux Falls and Sioux City are fairly adjusted with reference to distance, but the equitable relation of those rates is no answer to the charge of unjust discrimination in rates from eastern points to these towns respectively. Sioux Falls is entitled to receive traffic, as well as to distribute it, at rates which are relatively reasonable as compared with those enjoyed by Sioux City.

Although these cases are brought in the name of a single individual, their scope is not confined to the effect of existing rates upon the interests of the nominal complainant. The complaints under investigation challenge the lawfulness of the entire schedule of freight rates to Sioux Falls as compared with those in force to Sioux City, a town competing with Sioux Falls for the jobbing trade of a considerable territory, and the importance of the inquiry is measured by the effect upon these rival communities, and the surrounding area of country, of an unjust relation in the rates applied to them respectively. Such an inquiry, as distinguished from one involving only individual grievances, is peculiarly public in its nature. It embraces in a comprehensive proceeding the various business and industrial interests centered in cities and towns, as those interests are affected by the charges of public carriers whose facilities are employed in the interchange of commerce. Carriers exercising this public function are required to subordinate their private interests and business relations with each other to the superior obligation of fairness and impartiality in their treatment of rival communities. They are entitled to reasonable compensation for their services, but they should not be allowed to stimulate or retard the enterprise and natural growth of localities by relative rates which effect the undue preference or prejudice forbidden by the statute. That the task imposed by these limitations is difficult, and must often be imperfectly performed, results from the complex situations which arise and the varying conditions which enter into the problem. Hence, a given relation in rates between competing towns, fairly equitable at the time of its adoption, may become, through the development of business and changes in other conditions, severely prejudicial to the town taking the higher schedule. This is especially liable to occur when additional lines of communication are opened up to

the latter locality, and all the roads reaching that point agree, for purposes of their own, or for reasons grounded in mistaken policy, to continue a relation of rates between it and its rivals which seems unfair and disproportionate in view of its improved situation. When the rates applied to a complaining town are asserted to be relatively unjust, because more favorable charges are allowed to a competing locality, it is the duty of the Commission to investigate the facts and circumstances affecting the transportation, and to order such readjustment as appears to be required by due consideration of all the interests involved.

This brings us to the real question in these cases: Are rates from Chicago and Duluth to Sioux Falls unreasonable or unjust as related to rates from the same points to Sioux City, a competing locality, and do they subject Sioux Falls to any undue prejudice or disadvantage? If, with reference to west-bound traffic, to which these complaints are wholly confined, Sioux Falls is as advantageously located in all respects as Sioux City, it is entitled *prima facie* at least to Sioux City rates; if otherwise, then the relation of rates applied to these two points should accord with their relative situation.

*Eau Claire Board of Trade v. Chicago, M. & St. P. R. Co.* 4 Inters. Com. Rep. 65, 5 I. C. C. Rep. 264; *Chamber of Commerce of Minneapolis v. Great Northern R. Co.* 4 Inters. Com. Rep. 230, 5 I. C. C. Rep. 571; *James v. Canadian Pac. R. Co.* 4 Inters. Com. Rep. 274, 5 I. C. C. Rep. 612.

First, as to rates from Chicago. The present adjustment of these rates is based upon the short line distance to Sioux City and Sioux Falls respectively, and upon that fact much reliance is placed by the defendants. They also point out that the most direct routes from the eastern seaboard to these destinations are those through Chicago, and assert that competitive rates by the more indirect routes through Duluth and Milwaukee must necessarily be the same as those established by the lines through Chicago. The substance of their contention, therefore, is that rates to Sioux City and Sioux Falls—by whatever route the transportation is effected—are justly based on the short line distance from Chicago. Undoubtedly distance by the shorter line is an important circumstance to be considered in determining the propriety of rates by longer competing routes, (*Lincoln Board of*

*Trade v. Missouri Pac. R. Co.* 2 Inters. Com. Rep. 98, 2 I. C. C. Rep. 155), but it should not, through agreement of interested carriers to charge short line rates, operate to deprive a complaining town of advantages resulting from greater proximity to distributing centres, where the action of competitive forces, including those of water routes, induces a low range of rates. It is also to be observed that the short line argument, however persuasive as a general proposition, is an inadequate defense of the present disparity in rates between Sioux City and Sioux Falls. It is unusual to find freight charges applied in exact proportion to distance, especially where all the places compared are at considerable distance from common points of origin. Ordinarily the rate per ton per mile diminishes with increasing length of haul, and it does not follow that Sioux Falls rates should be 108 per cent of Sioux City rates because the short line distance from Chicago to Sioux Falls is 108 per cent of the short line distance to Sioux City. Measured by distance alone, and bearing in mind that the difference in this respect is less than eight per cent of the shorter distance, it would seem that Sioux Falls is entitled to rates not much in excess of those accorded to Sioux City. Moreover, Sioux Falls is by no means an isolated town, limited in its means of communication with the larger places from which or through which its supplies are obtained. It appears to be served by at least five different lines from Chicago, two from Duluth, two from Milwaukee and two from St. Paul. In the matter of railway facilities it is scarcely inferior to Sioux City. As to short line distances from the various gateways mentioned, it is at a disadvantage as compared with Sioux City of only 37 miles from Chicago, while it is nearer to Milwaukee by 26 miles, and nearer to Duluth by 78 miles.

The Duluth route is an active competitor for eastern business and a potent factor in the adjustment of rates from the east to points in the northwestern states. Chicago, Milwaukee, and Duluth are common basing points, and the various roads leading westerly from these places apply the same rates to many competitive stations, among which are Sioux City and Sioux Falls. Without implying any general criticism of legal agreements by which competing carriers to and in northwestern territory undertake to maintain existing rates, we hold that such agreements,

though designed to secure the lawful, orderly, and profitable operation of the roads, cannot be permitted to fasten upon neighboring localities a relation of rates which is unnatural or unjust. Carriers from Chicago and Duluth make west-bound rates independently of carriers east of those points, and the principle of shorter distance which the defendants invoke in their favor as to traffic from Chicago applies with equal force against them as to traffic from Duluth. The superior situation of Sioux Falls over that of Sioux City with reference to lines from or through Duluth, and from Milwaukee as well, undoubtedly entitles Sioux Falls to something more favorable than a relation of rates proportioned to short line mileage from Chicago. Indeed, confining the issue to location alone, and taking into account only the relations of the carriers to these two towns, we should have little hesitation in prescribing for Sioux Falls substantially the same rates from Chicago as are granted to Sioux City. But this view of the case appears to us inadequate. We believe that a just solution of the difficulty involves a broader inquiry and that other considerations should incline us to a somewhat different conclusion.

For a number of years the various carriers interested have granted to Sioux City what are known as "Missouri River" rates, that is, the same rates on west-bound traffic as were in force from time to time to other points southerly thereof on or near that river, such as Omaha, Council Bluffs, Leavenworth, Atchison, St. Joseph, and Kansas City. Whatever influences may have brought about this arrangement, it resulted in somewhat lower rates than Sioux City had previously enjoyed. While some reductions to Sioux Falls, and other places in contiguous territory, appear to have been made at about the same time—induced presumably by the allowance of Missouri River rates to Sioux City—the circumstance that the latter town was placed on an equality with Omaha, and other cities above mentioned, gave a decided impetus to its prosperity and added materially to its advantages as a distributing center. In other words, the disparity complained of had its origin in a rather arbitrary, though doubtless convenient, adjustment by which Sioux City became a "Missouri River point" and thereby secured rates to which it may not have been fully entitled. This fact would suggest that the inequality asserted in these proceedings might be removed by some advance in rates to

Sioux City, if the interests of that locality were alone concerned. But the reduced rates accorded to that town and denied to Sioux Falls have been in effect for several years, the charges to many other points have been fixed with reference to the charges to Sioux City, and the industries of numerous towns in a large section of country adjusted to a permanent scheme of rate making which includes Sioux City among the "Missouri River points." Where carriers have maintained for a considerable period a relation of rates affecting an extensive territory, though somewhat more favorable to one community therein than appears to be justified, and commercial conditions there and elsewhere have become measurably dependent upon the continuance of that relation, it would ordinarily be inexpedient to increase rates at that point as the means of correcting relative injustice to another locality. In such case the only practicable remedy is to reduce the rates to the injured town.

While we are satisfied that the rate from Chicago to Sioux Falls is somewhat too high, in comparison with the rate to Sioux City, we are not convinced that the former is entitled to quite the same rate as the latter. If the concession of Missouri River rates to Sioux City was not wholly justified by its location and importance at the time that arrangement was made, it would seem like a repetition of the error to order a reduction to Sioux Falls which otherwise would not be clearly warranted. Some difference in rates between these towns, for the present at least, appears to be sanctioned by a careful survey of the whole rate situation, and by the importance of avoiding so considerable a disturbance as would be liable to result from the application of Sioux City rates to Sioux Falls. In this view we are influenced by the consideration already referred to, that the relative rates complained of in this proceeding resulted from the questionable practice by which the same rates are established to all so-called Missouri River points. Many of the reasons which induced the carriers to use the Missouri River as a basing line, and to make common rates to so many widely separated places, have largely disappeared with the extension of railway systems far beyond the west bank of that river. On the other hand, the opening up of additional routes from the east has increased the competition and complicated the difficulty with new conditions. Meantime towns not originally included

have been added to the list of Missouri River points. While comments on the propriety of taking a north and south river as the line on which to establish common rates for east and west traffic may not be pertinent to this discussion, we are disposed to say that the "basing point" method of rate making—at least to the extent it is now employed—has never commended itself to the judgment of the Commission or appeared to be necessary to an adequate scheme of tariff construction. On this account alone we should be quite unwilling to place another name on the list of Missouri River points, except upon the clearest showing of injustice to a complaining rival which could be obviated in no other way.

Both parties have cited our decision in the case of *Manufacturers & J. Union of Mankato v. Minneapolis & St. L. R. Co.* 3 Inters. Com. Rep. 115, 4 I. C. C. Rep. 79. We agree that the main proposition therein affirmed is applicable here: "Equality in charges is required under circumstances and conditions substantially similar, and relative equality is necessary in the degree of similarity." Other things being equal, it might well be held that the distance of Sioux Falls from Chicago would entitle it to rates from that point not materially different from those applied from Chicago to Sioux City. But the circumstances and conditions affecting the respective lines of transportation to these two towns appear to be unlike in some important particulars, and those differences are deemed sufficient—for the general reasons above suggested—to warrant us in allowing some difference in the rates now under consideration. Having regard, nevertheless, to the "degree of similarity" observed, we are convinced that relative equality requires a substantial modification of the present disparity and indicates with a degree of certainty the measure of appropriate reduction in rates to Sioux Falls.

The situation we have thus discussed is surrounded with difficulty, and no conclusion regarding these rates can be wholly satisfactory. Taking everything into account, however, we believe that approximate justice will be secured under existing conditions if rates from Chicago to Sioux Falls are limited to 104 per cent of the rates contemporaneously in force from Chicago to Sioux City. This is practically equivalent to reducing the present dif-



ference one half, and would give to Sioux Falls on the basis of current tariffs—fractions less than a quarter of a cent being discarded—the following maximum rates:

Classes	1	2	3	4	5	A	B	C	D	E
Rates	83	67½	47	33	28	33	28	23	19	16½

The present difference between rates from Chicago to Sioux Falls and to Sioux City, and the difference existing under such an adjustment, will appear from the following comparison:

Classes	1	2	3	4	5	A	B	C	D	E
Difference under present rates . . . . .	6	5	4	2½	2	2½	2	2	1½	1
Difference under rates ordered . . . . .	3	2½	2	1	1	1	1	1	½	½

Second, as to rates from Duluth. At the time these cases were heard, and until the present year, rates from all eastern points to Sioux Falls were the same by way of Duluth as by way of Chicago. Under this adjustment the routes *via* Duluth appeared to be—and doubtless were—in active competition with the routes *via* Chicago for Sioux Falls business. This equality of charges on through shipments gave to Sioux Falls the advantage of different and independent routes at the same rate, and enabled the rail lines from Duluth to participate in traffic from the east to Sioux Falls. While these competitive conditions existed we were disposed to allow the same relative rates from Duluth to Sioux City and Sioux Falls as were prescribed from Chicago to those points respectively, not because a higher rate from Duluth to Sioux Falls than to Sioux City is intrinsically just to Sioux Falls,—for we were not of that opinion,—but because the apparent consequence of an enforced reduction from Duluth to Sioux Falls would be a voluntary reduction of corresponding amount by the lines from Chicago to Sioux Falls. The latter obviously have it in their power to meet whatever rates the Duluth lines put in effect to Sioux Falls, and it was presumed they would do so in order to hold their Sioux Falls business. Having reached the conclusion that the lines from Chicago might reasonably charge something more to Sioux Falls than to Sioux City, we could not very consistently require the lines from Duluth—while there was strong competition for eastern traffic to Sioux

Falls—to make relatively more favorable rates to that place than their Chicago rivals were allowed to maintain, since the practical effect of such a direction would be to force the Chicago lines to lose their eastern business to Sioux Falls or to further reduce their rates to that point to the same figures as the rates from Duluth; and the latter alternative, as it seemed to us, was clearly at variance with our determination of the proper relation of rates from Chicago to Sioux City and Sioux Falls.

But as respects eastern shipments to Sioux Falls the situation appears to have been materially altered. The discontinuance by eastern lines of proportional rates to Duluth on traffic destined to Sioux Falls and Sioux City, except by the Fitchburg route to the latter place, has withdrawn the Duluth routes from competition with the Chicago routes on shipments to these points. The Sioux Falls rate from the east *via* Duluth is now so much in excess of the rate *via* Chicago as to preclude any actual competition by way of Duluth for Sioux Falls business. The lines from Chicago to Sioux Falls and those from Duluth to Sioux Falls are at present practically independent and unrelated; and, this being so, the reasons formerly relied upon for allowing the same rate from Duluth to Sioux Falls as from Chicago to that point have mainly disappeared. It may be assumed that the Duluth roads are in no degree responsible for this recent action of the eastern lines, but nevertheless the result of that action is new and different conditions permitting an adjustment of Duluth rates to Sioux Falls and Sioux City which otherwise might be impracticable. As matters now stand we feel warranted in determining the proper relation of those rates without special reference to the relative rates from Chicago to these places. Believing, therefore, that the contention between complainant and the Duluth roads is no longer controlled by the relation of rates from Chicago, we discover no sufficient reason for allowing the carriers from Duluth to exact higher rates on traffic to Sioux Falls than they accept at the same time on like traffic to Sioux City. The location of Sioux Falls, its shorter distance from Duluth and the conditions under which transportation from that point is effected, seem to require as low rates to Sioux Falls as those accorded to Sioux City. Without reciting the facts or stating the reasons in greater detail, our conclusion in this case is

that, under existing circumstances, rates from Duluth to Sioux Falls should not exceed the rates contemporaneously in force from Duluth to Sioux City.

Our decision in these cases is confined to the *relation* of rates from Chicago and Duluth to Sioux Falls and Sioux City, which was the principal controversy in these proceedings. The *reasonableness* of the rates complained of is not now determined, as that question is directly at issue in another case involving the reasonableness of existing rates to all Missouri River points. Any reduction directed in that proceeding would require a corresponding reduction to Sioux Falls under the principle of this decision.

An order will be entered in conformity with the foregoing report and opinion.

THE COLORADO FUEL & IRON COMPANY V. THE SOUTHERN PACIFIC COMPANY; THE ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY; THE ATLANTIC & PACIFIC RAILROAD COMPANY; THE COLORADO MIDLAND RAILROAD COMPANY; THE ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, AND ALDACE F. WALKER, JOHN J. MCCOOK, AND JOSEPH C. WILSON, Receivers of said THE ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY; THE ATLANTIC & PACIFIC RAILROAD COMPANY, AND THE ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY; THE BURLINGTON & MISSOURI RIVER RAILROAD IN NEBRASKA; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE DENVER & RIO GRANDE RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE OREGON & CALIFORNIA RAILROAD COMPANY; THE RIO GRANDE WESTERN RAILWAY COMPANY; THE SOUTHERN CALIFORNIA RAILWAY COMPANY; THE TEXAS & PACIFIC RAILWAY COMPANY; THE UNION PACIFIC RAILWAY COMPANY, AND S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, JOHN W. DOANE AND FREDERIC R. COUDERT, Receivers thereof; THE UNION PACIFIC, DENVER & GULF RAILWAY COMPANY, AND FRANK TRUMBULL, Receiver thereof.

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Decided November 25, 1895.

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1. An offer of defendant carriers, made during the pendency of a case, to reduce the rates complained of, provided the Commission would relieve such carriers from the operation of the fourth section by granting an order permitting such reduced rates to be less than the charges of such carriers to intermediate points, is not an application for an order of relief under the fourth section. Such an order can only be granted upon the application and investigation required by law.

2. Excess of manufacturing cost to a complainant at one point over that of its competitors in other localities, by reason of inferior raw material and fuel, condition of its plant, cost of labor or other like causes, is not to be considered in ascertaining the rightful relative adjustment of rates from such places, nor does the magnitude of a complainant's enterprise, the number of persons for whom it provides employment and support, the developing results of its business upon the natural resources of a state, the impracticability of moving its plant to other localities, or the fact that it produces material largely used on railroads for construction or repair, entitle such complainant to different consideration in respect of just rates than individuals and small concerns should receive; but such facts demonstrate the far reaching extent to which serious injury may be effected, directly and indirectly, by methods and practices which the statute was designed to prohibit.
3. Unreasonable disparity between the aggregate rates on hauls of different length to a common destination, whether by one carrier or by more than one jointly, resulting in undue advantage to one locality or business or disadvantage to another, is unlawful. It is lawful for a carrier, within reasonable limits, to accept less per ton per mile upon long hauls than upon short ones, and to widen the disparity between such rates per ton per mile as the difference in distance increases. Hence, the proportion received by some of the carriers out of a long distance through rate is not necessarily the measure of the through rate which such carriers are entitled to make over a materially shorter distance, though such proportion is an important consideration in determining the rightful relation of the two through rates.
4. Water competition is altogether inadequate to account for the general relatively low rating of lumber, grain, and other staple or heavy goods to or between inland points, and that of a long list of commodities, including iron and steel, to San Francisco from Chicago and so-called Mississippi river and Missouri river points. Whatever may be the merits of carriers' competition as a defense of lower rates for longer than for shorter hauls, the former involving greater service and expense on the part of the carrier, better cause apparently exists for lower rates where, under higher ones, the traffic is subjected to such disadvantage or prejudice that it will not move at all.
5. It is for the interest of carriers as well as the public that their rates be low enough, if not below a remunerative point, to promote the general movement and distribution of low class commodities, including iron and steel, which are in general demand for construction, building, manufacturing, and other purposes; and rates on steel rails and other commodities recognized as among the lowest classes of freight, which yield per ton per mile the average received by the carriers on all freight, would be unjust. The value of the goods, the cost of the service, the degree of risk to the carrier, among other considerations, have important bearing upon the relation of rates on different kinds of traffic, as well as the reasonableness of a rate on a specified article.

6. The action of a carrier in diverting through traffic from a shorter route over which it participates in carriage, so as to secure for itself greater aggregate revenue through a long haul by a different route over which it is also engaged in transportation, sometimes results in discriminations and prejudices, both as to rates and facilities; and inequality in treatment of shippers and localities, having no other justification than this end, is indefensible.
7. The shipment of iron and steel from foreign countries to San Francisco at low rates by water affects the iron and steel industry at Pueblo as well as at eastern points in respect to participation in supplying that market.
8. Rates in force from Pueblo to San Francisco prohibit the movement of iron and steel articles from the former place to the latter, while greatly lower rates from other and far more distant points prevail on such traffic to San Francisco, and the carriers' cost of transportation is much less from Pueblo than from such more distant points of shipment:

*Held*, upon all the facts and circumstances in the case, that such rates from Pueblo are unreasonable and unjust, and subject complainant, the localities in the state of Colorado where its industry is carried on, and its traffic in iron and steel articles to San Francisco, to undue and unreasonable prejudice and disadvantage, and result in giving undue preference and unreasonable advantage to other shippers in the United States of iron and steel over the defendant roads to San Francisco.

9. Carriers' methods of making and publishing rates from eastern points to the Pacific coast criticised. Mere designation in a paper or circular of the means of arriving at rates by calculation or reference to other papers or tariffs does not constitute the rate sheet required to be published and filed by section six of the law. The reissuing by a carrier of a tariff of another line and by a supplement concurrently issued limiting its use of the rates therein prescribed to such as are over a specified minimum, is reprehensible. The only satisfactory method of publishing rates is to definitely state the charges fixed between points clearly specified, without burdening and confusing the public with the need of making involved calculations or with scrutinizing a series of supplements to determine whether a particular rate has been changed since the original tariff was issued.

*D. C. Beaman*, for complainant.

*James C. Martin* and *C. H. Tweed*, for S. P. Co.

*W. R. Kelly*, for U. P. Ry. Co. and Receivers.

*M. A. Low* and *Robert Mather*, for C., R. I. & P. Ry. Co.

*Charles F. Manderson* and *C. J. Greene*, for B. & M. R. R. in Neb.

*Geo. R. Peck*, *Britton & Gray*, *Robert Dunlap* and *Chas. E. Gast*, for A., T. & S. F. System and Receivers, and Colo. Mid. R. Co. and Receiver.

*Wolcott & Vaile* and *Henry F. May*, for D. & R. G. R. Co.

## REPORT AND OPINION OF THE COMMISSION.

**CLEMENTS, Commissioner :**

The complainant alleges that it is a corporation formed under the laws of Colorado and engaged at Pueblo, in that state, in mining coal and iron ore and in manufacturing coke, steel rails, cast-iron water pipe, pig iron, railroad fastenings, merchant bar iron and steel; that the defendants are common carriers subject to the provisions of the Act to Regulate Commerce; that they, or such of them as participate in traffic from Pueblo to San Francisco, Cal., publish a rate on steel rails and other articles of iron and steel of \$1.60 per hundred pounds, while they are parties to tariff rates on the same articles to San Francisco from Chicago, Ill., Mississippi river points and Missouri river points of, respectively, 60, 58, and 54 cents per hundred pounds; that the rate on said commodities from certain Atlantic points and New Orleans is as low and sometimes lower than from Chicago; that the rates stated constitute unjust discrimination against Pueblo, and give undue preference and advantage to localities east thereof; that they are in violation of the fourth section of the Act to Regulate Commerce; that those from Pueblo to San Francisco are unreasonable; and that complainant's business of supplying fuel to Colorado industries is greatly affected by rate discriminations whereby their products are kept out of the San Francisco market.

Upon substantially similar grounds, the rates of the defendants on all other goods between Colorado points and points in California are alleged in like manner and in the same particulars to be unlawful.

It is also charged that the adjustment of the rates complained of from Pueblo to San Francisco has deprived complainant of a "large and valuable business in the past."

The prayer is that the defendants be ordered to cease and desist from said violations of the Act to Regulate Commerce; and "that an order be issued to the Southern Pacific and the other rail roads in question, compelling them to haul iron and steel and all other articles from Pueblo to San Francisco at rates per hundred pounds that will pay them relatively for the service performed not more than the same profit that they receive for transporting

similar commodities originating at the Atlantic seaboard, Chicago, St. Louis, or other points east of Colorado, to San Francisco, and for such other and further order as the Commission may deem necessary in the premises." Reparation is also asked for the alleged injury to complainant's business.

Most of the defendants admit and none deny that they are subject to the statute. Those operating roads not running west of Pueblo deny that they participate in rates or transportation from that place to San Francisco, but, with one or two exceptions, admit that they are engaged in the transportation of iron and steel freights from points east of Pueblo to San Francisco. The Texas & Pacific Railway Company denies participation or concern in the rates or transportation in question. The answer of the Chicago, Burlington & Quincy Railroad Company for itself, and as owner and assignee of the Burlington & Missouri River Railroad in Nebraska, also amounts to a general denial of the allegations of the petition, so far as they apply to it. Most of the answers deny that the rates complained of are in violation of law, and attention is called to changes therein, subsequent to the filing of the complaint, raising those on steel rails from Missouri river points from 54 to 60 cents, and from Mississippi river points from 58 to 60 cents, making them equal to those from Chicago to San Francisco. It is admitted that the rates from the Atlantic seaboard to San Francisco on the commodities named are as low as those from Chicago.

The averments which it is deemed material here to state in the answer of the Southern Pacific Company are, in substance, that the market for steel rails and other iron and steel products at San Francisco is almost exclusively supplied by manufacturers and dealers located on or near the Atlantic seaboard; and that there are open to these manufacturers and dealers the low rates of transportation by steamers, but more particularly by sailing vessels plying between the Atlantic seaboard and San Francisco, which are not subject to the Act to Regulate Commerce; that it is impossible for the transcontinental railroads to compete with these ocean carriers in the transportation of steel rails and other iron and steel products in any other manner than by accepting transportation at less than would otherwise be fair and reasonable rates, and at less than the average cost of transportation, and but little, if any, more than the actual cost of moving the freight.



That sea rates for the transportation of steel rails and other steel and iron products from the Atlantic seaboard to San Francisco are and can be obtained at from four dollars (\$4.00) to six dollars (\$6.00) per long ton, being from about eighteen (18) to twenty-seven (27) cents per hundred pounds; and the result has been and is that nearly all the steel rails and other steel and iron products which reach the San Francisco market go by sea and that defendants obtain no advantage, benefit, or profit therefrom.

That this competition by sea in the transportation of steel rails and other iron and steel products is and has been actual, active, and of controlling force, and compels defendants to accept such rates as they can obtain above the actual cost of moving the freight from the Atlantic seaboard to San Francisco, or to abandon the traffic, and that the controlling force of this competition extends westward from the Atlantic seaboard to those points at which the rail rate eastward to the Atlantic seaboard added to the ocean rate from the Atlantic seaboard to San Francisco will approximate a fair, reasonable, and just west-bound rail rate to San Francisco; that if the petitioner has not been able to compete with other manufacturers and dealers in the market of San Francisco, it is solely by reason of the advantages offered to its competitors in the low ocean rates afforded by their locations, and not by any act, default or omission on the part of defendants.

That it would be to the benefit, profit, and advantage of defendants, if steel rails and other steel and iron products of petitioner and of other interior manufacturers and dealers, could be placed in the market of San Francisco so as to displace the steel rails and other iron and steel products of manufacturers and dealers on or near the Atlantic seaboard which reach the San Francisco market by sea, provided this could be done without loss and with some profit over the actual cost of moving the freight to defendants; and to this end this defendant "offers, with the consent of this Commission, to join with its codefendants, if they shall be so advised, in putting in force between Pueblo and San Francisco the rates now in force upon steel rails and other iron and steel products from the Missouri river points to San Francisco, though these rates will yield to this defendant less than the average cost of the movement of freight over its lines."

It is insisted that defendants have lawful right to make reduced

rates, not less than the cost of moving the freight, for the purpose of fairly meeting the competition of carriers by water not subject to the provisions of the Interstate Commerce Law, wherever that competition is actual, active, and of controlling force; and that they can lawfully exercise this right without prejudice to the right of charging and receiving fair and reasonable rates for the transportation of freight not subject to this competition.

The answers of the receivers of the Atchison, Topeka & Santa Fé Railroad Company and the receivers of the Union Pacific Railway Company are, in material substance, similar to that of the Southern Pacific and to the same effect, including a like offer to reduce rates from Pueblo to San Francisco.

It was insisted on behalf of the complainant at the hearing that the rates from Pueblo to San Francisco should not exceed 40 cents on steel rails and 33 cents on bar iron; and most of the defendants concerned in the transportation of freight originating at Pueblo and destined westward, by their representatives, indicated willingness to concede such rates to complainant on condition that the Commission would construe the long and short haul rule or grant relief therefrom so as not to make such rates the maximum from Pueblo to points on their lines between Pueblo and San Francisco. Under such ruling or order all the defendants seem agreed that rates to San Francisco might, on occasion, be made less from Pueblo than from the east.

This offer to reduce the rates from Pueblo to San Francisco, on condition that they should not be applied as maximum rates to intermediate points, is not an application for relief from the operation of the fourth section of the law. Nor is the proper determination of the questions presented in this case dependent upon such order as might be issued after an investigation on application for relief as is required by the statute.

Upon the request of complainant, hearing was had only in respect to that part of the complaint relating to rates on steel rails, railroad fastenings, bar iron, cast-iron water pipes, pig iron, and other iron and steel commodities which take similar rates, those complained of on other goods being involved in another case fixed for hearing at the same session of the Commission.

#### FACTS.

1. The following rates are in effect *via* the lines of the defendants and are these chiefly in controversy.

# RATES ON IRON AND STEEL ARTICLES TO SAN FRANCISCO, CAL.

RATES IN CENTS PER 100 POUNDS.

FROM	STEEL RAILS.		RAILWAY FASTENINGS.		BAR IRON.		CAST IRON WATER PIPE.		PIG IRON.		BILLETS AND BLOOMS.		NAILS AND SPIKES.	
	Class	Rate	Class	Rate	Class	Rate	Class	Rate	Class	Rate	Class	Rate	Class	Rate
Colorado Common Points (Fueler)	5th	1.60	5th	1.60	5th	1.00	B	1.30	D	.85	D	.85	5th	1.60
Missouri River Points.....	Special	.60	Special	.60	Special	.50	Special	.50	Special	.50	Special	.50	Special	.50
Mississippi River Points (New Orleans included)	Special	.60	Special	.60	Special	.50	Special	.50	Special	.50	Special	.50	Special	.50
Chicago, Ill. ....	Special	.60	Special	.60	Special	.50	Special	.50	Special	.50	Special	.50	Special	.50
Columbus, Ohio.....	Class & Sp'1	.72	Class & Sp'1	.72	Class & Sp'1	.62	Class & Sp'1	.62	Class & Sp'1	.62	Class & Sp'1	.62	Class & Sp'1	.62
(Based on Chicago)	Specials	.72	Class & Sp'1	.75	Class & Sp'1	.65	Class & Sp'1	.65	Class & Sp'1	.65	Class & Sp'1	.65	Class & Sp'1	.65
Pittsburg, Pa. ....	Specials	.70	Class & Sp'1	.75	Class & Sp'1	.65	Class & Sp'1	.65	Class & Sp'1	.65	Class & Sp'1	.65	Class & Sp'1	.65
Pittsburg, Pa. for Miss. R.R.'s	Specials	.70	Class & Sp'1	.75	Class & Sp'1	.65	Class & Sp'1	.65	Class & Sp'1	.65	Class & Sp'1	.65	Class & Sp'1	.65
(Based on New York)	Special	.60	Special	.60	Special	.50	Special	.50	Special	.50	Special	.50	Special	.50
New York, N. Y. ....	Special	.60	Special	.60	Special	.50	Special	.50	Special	.50	Special	.50	Special	.50
New York Morgan SS. Co.)	Class & Sp'1	.84	Class & Sp'1	.84	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74
New York Chicago.....	Class & Sp'1	.84	Class & Sp'1	.84	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74
(Via Chicago)	Class & Sp'1	.84	Class & Sp'1	.84	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74
See exceptions in explanation	Class & Sp'1	.84	Class & Sp'1	.84	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74	Class & Sp'1	.74

NOTE 1.—When combination rates from Pittsburg or Columbus are the class rate to Chicago and Special Rate west therefrom, that class rate (cell) has been used to Chicago which prevails on Iron articles during the greater portion of the year.

NOTE 2.—Rates from Birmingham, Ala., are based on the rate from Memphis, a Mississippi River Point.

Rates to San Francisco *via* the Morgan Line of Steamers from New York & Southern Pacific Company's rail line from New Orleans are 60 cents per hundred pounds on rails and 50 cents on bar iron, as shown in "Sunset Route" California Freight Tariff No. C-12, effective March 5, 1895. This tariff also names rates to San Francisco from Baltimore, Philadelphia, Boston, and points common with each and points common with New York City. These common points, though not described on this tariff, are indicated by other tariffs filed with the Commission to be, with the cities above named, covered by the term "Atlantic seaboard common points," and situated easterly of Buffalo, Pittsburg, Wheeling and Parkersburg; but the tariff does not name carload rates on rails or bar iron from these common points, and therefore carload shipments from eastern points other than New York take combination rates by this route to San Francisco, and these are usually based on the rates from New York. The only commodity rate named in this tariff as applying from points other than New York City that is less than \$1.00 per hundred pounds is a 65-cent rate on canned goods in carloads, which is also in force from New York. Class rates applying from Chicago to San Francisco are in effect under this tariff from all Atlantic seaboard common points, and the lowest class rate (Class E) is 95 cents per hundred pounds.

The Union Pacific and its eastern connections to Chicago have, in Union Pacific G. F. O. 3213, adopted the tariff of the Southern Pacific Company, "Sunset No. C-12" and amendments, applying from New York City and Atlantic seaboard common points to San Francisco, but they stipulate in a supplement, effective March 5, 1895, for a minimum rate of \$1.00 per hundred pounds. The Atchison, Topeka & Santa Fé system, the Rio Grande Western and Southern Pacific companies have, by their Transcontinental West Bound Tariff No. 7-A, effective July 29, 1895, put in force from New York and all Atlantic seaboard common points to San Francisco the class rates in force from Chicago and also a large number of commodity rates. Under this tariff the Chicago rates on rails, bar iron, etc., of 60 and 50 cents, respectively, are in force from New York City only. Other seaboard common points apparently take combination rates to San Francisco, based on New York, Chicago or the Mississippi river.

It does not appear that the lines east of Chicago accept less than their established rates on traffic carried under the above mentioned tariffs of the Union Pacific or Santa Fé systems.

On traffic from interior seaboard points, that is, most points easterly of Buffalo and Pittsburg, the Southern Pacific Company has established for all rail traffic to Pacific coast points *via* New Orleans the lowest combination of rates which may be obtained by adding the established rate from point of shipment to New York, Pittsburg, Buffalo, or any other eastern boundary of the Central Traffic Association Territory, to the rate in force from Pittsburg, or Buffalo, or any such boundary point, or from New York *via* Morgan Line of Steamers, but providing for a minimum rate of seventy-five cents from the point of shipment. Southern Pacific Circular No 81, effective November 16, 1895.

All rail rates to Pacific coast points from Pittsburg, Columbus, and all other points in so-called Central Traffic Association Territory have, since October 2, 1895, been made upon the following basis:

West bound rates established from Chicago apply from all points in Central Traffic Association Territory to San Francisco, subject to a minimum rate of 75 cents per hundred pounds, but not to exceed the sum of the local rates east and west of Chicago or Mississippi river points. Transcontinental Freight Rate Committee Circular No T-25. The rates on iron and steel articles above given for Pittsburg and Columbus are combinations of rates based on Chicago or Mississippi river points. Such rates also apply *via* all rail lines through New Orleans. The lines east and west of Chicago, Mississippi river or New Orleans divide the through rate on a basis of agreed percentages.

Chicago rates are also in force from a number of stations easterly of the Central Traffic Association Territory boundary, and these rates are divided on a percentage basis slightly higher to eastern lines than percentages allowed them from Pittsburg. These stations are located as much as 40 or more miles east of Pittsburg.

Out of the rate of 72.3 cents per hundred pounds on rails and the rate of 65 cents per hundred pounds on bar iron from Pittsburg to San Francisco eastern lines to Cincinnati receive 13 per cent; to Chicago, 15 per cent; to East St. Louis, 18½ per cent.

The tariff circular showing these divisions (Transcontinental Freight Rate Committee Circular T-33) effective October 23, 1895) also contains the following "General Note:" "The remainder of the through rates, after deducting the proportions accruing to the gateway junctions, as herein provided, will apply west of said gateway junctions, and will subdivide on basis of established divisions."

Prior to the taking effect of the system of rate making above outlined, through rates from points east of Chicago and the Mississippi river were made by lowest combination. For example, the rate on rails from Pittsburg to New Orleans, all rail, is \$5.20 per ton of 2240 lbs. or 23.2 cents per hundred, and this added to the 60-cent rate in force from New Orleans to San Francisco would produce a combination of 83.2 cents; but the combination of rates *via* East St. Louis or Chicago is made by adding an established rate of 12.3 cents on rails to East St. Louis or Chicago to the rate of 60 cents therefrom to San Francisco, equal to 72.3 cents per hundred, and this, being the lowest combination, was used by all lines, including the route *via* New Orleans. The eastern lines received a share not exceeding their 23.2 cents local to New Orleans, the Southern Pacific accepting the remainder, 49.1 cents, for its haul from that point to San Francisco.

All rail rates from Pittsburg and other Central Traffic Association points to Portland, Oregon, were, from November 7 to November 14, 1895, 81 per cent of the rates in force from such points to San Francisco, and from November 14 to November 23, 1895, the Portland rate was 73 per cent of rates to San Francisco. This applied *via* New Orleans as well as other Mississippi river gateways.

The Union Pacific system put into effect on October 10, 1895, from Bessemer, Colo. (1 mile from Pueblo, Colo.), to Portland, Oregon, a rate on rails of \$9.00 per ton, or about 40.2 cents per hundred pounds. The short distance between these points by this route is about the same as the short line distance between Pueblo and San Francisco.

2. The complainant is a corporation engaged in mining coal and iron ore and manufacturing iron products and coke in Colorado and selling the same. It has about \$20,000,000 invested in

mining lands, mills, and furnaces in that state, and in good business seasons has employed between 5000 and 6000 men, its pay roll amounting to about \$10,000 a day. It mines its own coal and iron ore, makes its own coke and pig iron, quarries and treats its own limestone—all the raw material used in its business is produced in the state. It has about 69,000 acres of coal lands and 30,000 acres of iron mine area. Its coal mines are in Fremont, Huerfano, Las Animas, Gunnison, Garfield, and Pitkin counties; its iron mines in Saguache and Chaffee and its coke ovens in Garfield, Las Animas, and Gunnison, and the mills and steel plant at Pueblo. The capacity of its rail mill is over 100,000 tons of steel rails per annum. When running full the steel works consume daily between 300 and 400 tons of coal and nearly an equal amount of coke. It requires  $3\frac{1}{2}$  to 4 carloads of raw material for each carload of manufactured products. From 10 to 12 cars of iron ore are used in these steel works daily; they are not run to full capacity for want of markets for the products. Complainant distributes or endeavors to distribute its products throughout the section of country lying between the Pacific coast on the west, and the Missouri river on the east, down as far as Kansas City, below which point the eastern line of said section takes an irregular southwesterly course and passes through or near Galveston and Corpus Christi, Texas.

The complainant is at greater cost for labor and transportation of raw material than is borne by eastern manufacturers engaged in the same business, its iron ore has less pure metallic iron than eastern ore, and its coke, containing a greater amount of ash, is not as good as that produced in Illinois and Pennsylvania. Its mill has not been improved to modern standards. In the year ending June 30, 1894, the complainant produced 1,522,032 tons of coal and coke. Of this, 1,086,300 tons were sold and 43,733 tons used at the mines, 293,380 tons of coal were used at coke ovens, and 101,757 tons of coal and coke were used in the mills. The output from the mines and mills for the same year was as follows:

ARTICLES.		PRODUCED.	USED AT STEEL WORKS.
Pig Iron.....	tons of 2240 lbs.	80,727.905	\$1,416.378
Spiegel.....	" " " "	2588.409	2311.988
Iron Castings.....	" " 2000 "	620.584	581.421
Ingot Moulds and Stools .....	" " " "	1088.150	990.590
Brass Castings.....	pounds	58,608.	47,066.000
Steel ".....	tons of 2000 "	37.893	33.031
Cast Iron Pipe.....	" " " "	89.267	52.490
Steel Rails.....	" " 2240 "	34,152.479	246.836
Nails.....	kegs of 100 "		4.000
Spikes.....	cwt.	9657.310	638.590
Merchant Bar, etc. ....	tons of 2000 "	5833.141	1306.602
Muck Bar.....	" " 2240 "		5.000
Scrap ".....	" " " "		30.000
Swarf ".....	" " " "		18.000
Iron Billets and Fagot Bar.....	" " 2000 "	2340.002	2141.803
Steel Billets.....	" " " "	332.660	314.108
Ingot.....	" " 2240 "	38,984.060	41,264.690
Blooms.....	" " " "	38,101.410	38,313.233
Angle Bars.....	" " 2000 "	245.955	.043
Bar Strips.....	" " " "		274.430
Iron Ore.....	" " " "	75,645.200	75,645.200

Under present rates in force, it is impossible for complainant to sell its products in the San Francisco market in competition with eastern mines and mills.

3. In the iron and steel business the production of plain material, such as bar iron, waterpipe, steel and iron rails, rail fastenings, pig iron, and other articles of primary manufacture, is, in its relation to the building trades and to the secondary manufacture or reworking of iron and steel products into implements, general hardware, or high class construction material, similar to the relation of crude agricultural and primary milling products to the higher and more finished forms of food manufacture, and to forest product and initial lumber manufacture as compared with the various kinds of improved wood material and woodenware. Raw material and that in crude stages of manufacture, to be used mainly for higher development or for use in construction, are generally, or largely at least, found in the classes of freights made by common carriers which yield the lowest average gross revenue.

4. Each of the defendants is, by one or more ways of routing, engaged in the transportation of property, including iron and steel products, from points east of Pueblo to San Francisco and other Pacific coast points. All of the defendants owning or operating roads westwardly of Pueblo are engaged in the trans-



portation of property, including iron and steel articles, from Pueblo to San Francisco or other Pacific coast terminals. Traffic from Pueblo or the east can reach San Francisco by rail only over roads operated by the defendant, the Southern Pacific Company.

5. Pueblo is an intermediate point between the east and San Francisco for goods routed *via* the Missouri Pacific and western connections in Colorado, or *via* the Burlington or Rock Island road and the Denver & Rio Grande Railroad and western connections. Neither of the main east and west lines of the Union Pacific from Kansas City or Omaha passes through Pueblo. The Atchison, Topeka, & Santa Fé runs through Pueblo and connects with the Colorado Midland at Colorado Springs, but traffic destined to San Francisco by it may take its southern route by La Junta, Albuquerque, N. M., and Mojave, Cal.

6. Following are the distances over various routes from Pueblo, Chicago, Pittsburg, and New York to San Francisco:

#### FROM PUEBLO.

##### *Denver & Rio Grande R. R.*

Pueblo to Grand Junction.....	336 miles.....	D. & R. G.
Grand Junction to Ogden.....	328 ".....	R. G. Western.
Ogden to San Francisco.....	895 ".....	So. Pac. (Cen. Pac.)
Total.....	1559 miles.*	

##### *Atchison System.*

Pueblo to Grand Junction.....	346 miles.....	Atchison & Col. Mid.
Grand Junction to Ogden.....	328 ".....	R. G. Western.
Ogden to San Francisco.....	895 ".....	So. Pac. (Cen. Pac.)
Total.....	1569 miles.	

##### *Union Pacific System.*

Pueblo to Cheyenne.....	232 miles.....	U. P. & U. P. D. & G.
Cheyenne to Ogden.....	515 ".....	U. P.
Ogden to San Francisco.....	895 ".....	So. Pac. (Cen. Pac.)
Total.....	1642 miles.	

\* Pueblo to Grand Junction *via* D. & R. G. Gunnison line is 305 miles, reducing total distance to 1528 miles.

## FROM CHICAGO.

*Burlington System and Connections.*

Chicago to Denver .....	1020 miles.....	Burlington System.
Denver to Pueblo .....	120 " .....	D. & R. G.
Pueblo to Grand Junction, Col. ..	336 " .....	D. & R. G.
Grand Junction to Ogden, Utah..	328 " .....	R. G. Western.
Ogden to San Francisco .....	895 " .....	So. Pac. (Cen. Pac.)
Total, .....		2699 miles.

*Chicago & Northwestern and Union Pacific via Council Bluffs.*

Chicago to Council Bluffs.....	489 miles.....	Chicago & N. W.
Council Bluffs to Ogden.....	1084 " .....	U. P.
Ogden to San Francisco .....	895 " .....	So. Pac. (Cen. Pac.)
Total, .....		2418 miles.

*Chicago, Rock Island & Pacific and Denver & Rio Granda.*

Chicago to Pueblo .....	1127 miles.....	C. R. I. & P.
Pueblo to Grand Junction .....	336 " .....	D. & R. G.
Grand Junction to Ogden .....	328 " .....	R. G. Western.
Ogden to San Francisco .....	895 " .....	So. Pac. (Cen. Pac.)
Total, .....		2686 miles.

*Chicago, Rock Island & Pacific and Union Pacific.*

Chicago to Denver.....	1098 miles.....	C. R. I. & P.
Denver to Cheyenne .....	107 " .....	U. P.
Cheyenne to Ogden .....	515 " .....	U. P.
Ogden to San Francisco .....	895 " .....	So. Pac. (Cen. Pac.)
Total, .....		2610 miles.

*Atchison System and Colorado Midland.*

Chicago to Colo. Springs .....	1136 miles.....	Atchison.
Colo. Springs to Grand Junction..	303 " .....	Colo. Mid.
Grand Junction to Ogden.....	328 " .....	R. G. Western.
Ogden to San Francisco .....	895 " .....	So. Pac. (Cen. Pac.)
Total, .....		2662 miles.

*Atchison System via Albuquerque and Mojave.*

Chicago to Mojave, Cal.....	2195 miles.....	Atchison.
Mojave to San Francisco, Cal.....	382 " .....	So. Pac.
Total, .....		2577 miles.

*Illinois Central and Southern Pacific via New Orleans.*

Chicago to New Orleans.....	912 miles.....	Ill. Cent.
New Orleans to San Francisco ...	2489 " .....	So. Pac.
Total, .....		3401 miles.

*Distances New York and Pittsburg to San Francisco.*

New York to Chicago.....	918 miles.....	Penn.
Chicago to San Francisco.....	2418 "	Via Council Bluffs and Ogden.
Total, .....	3331 miles.	

Pittsburg to Chicago.....	468 miles.....	Penn.
Chicago to San Francisco.....	2418 "	Via Council Bluffs and Ogden.
Total, .....	2886 miles.	

Pittsburg to Cincinnati.....	318 miles.....	Penn.
Cincinnati to New Orleans.....	830 "	Q. & C.
New Orleans to San Francisco.....	2489 "	So. Pac.
Total, .....	3633 miles.	

The distance from Pittsburg to New York is 445 miles, and from Columbus, Ohio, to New York the distance is 638 miles.

The short line distance from Pueblo to San Francisco bears the following relations to distances from Chicago, Pittsburg, New York and New Orleans to San Francisco:

	Miles.		Miles.	
Chicago.....	2418	Pueblo	1559	About 64½ % of Chicago distance.
Chicago <i>via</i> New Orleans, }	3401	"	1559	" 45½ % of " "
Pittsburg.....	2886	"	1559	" 54 % of Pittsburg "
Pittsburg <i>via</i> New Orleans, }	3633	"	1559	" 42½ % of " "
New York.....	8331	"	1559	" 46½ % of New York "
New Orleans.....	2489	"	1559	" 62½ % of New Orls. "

Taking Kansas City and St. Louis as bases and computing *via* Pueblo, the distances from Missouri river and Mississippi river points to San Francisco are: Kansas City, 2194 miles; St. Louis, 2471 miles.

7. Rates from the Atlantic seaboard to San Francisco, all rail or steamship to New Orleans and rail to San Francisco over the water and rail route known as the "Sunset route" of the Southern Pacific, are made low to meet the competition of steamship lines from the Atlantic to the Pacific coast, especially from New York to San Francisco, both by way of Panama and Cape Horn. There is also competition by sail, though less potential, by the latter route. Rates from interior points in the east to Pacific coast points are influenced to some extent by the combination of rail rates to the Atlantic and those from the seaboard wholly by water or by rail and water.

A large proportion of the rails shipped from the east to San Francisco go by New York and the Southern Pacific steamship and rail line *via* New Orleans. Water routes from New York have made a rate of 75 cents on rails from that port to San Francisco when the traffic originates in the interior, and they absorb into it the local to the seaboard, or so much of it as does not exceed 30 cents per hundred pounds. Iron and other steel articles like bar iron and steel rails are desirable freight for ships for ballast, and this fact increases competition by them.

8. In selling its products in San Francisco the complainant must meet not only the competition of manufacturers in Illinois, Pennsylvania, Alabama and other states, but also the competition of foreign countries where iron and steel goods are produced. The price in San Francisco is partly controlled by the price of the articles in the foreign market and cost of transportation therefrom. Foreign ships frequently bring to Pacific coast points, in ballast, coal and iron products at low rates.

9. Following is a table showing changes in rates on iron articles from Chicago, Mississippi river points, Missouri river points and New York since July 18, 1892:

*Statement Showing Changes in Rates on Iron and Steel to San Francisco, Cal., from Chicago, Mississippi River, Missouri River and New York.*

To SAN FRANCISCO, CAL.	RATE IN CENTS PER 100 POUNDS.								
	FROM CHICAGO, ILL.								Present Rate.
	Date.	Rate.	Date.	Rate.	Date.	Rate.	Date.	Rate.	
Bar Iron.....	7/18/92	115	4/11/93	60	4/19/94	50	4/18/94	40	50
Cast Iron W. Pipe....	"	110	"	70	"	50	"	30	50
Steel Rails.....	"	80	"	60	"	60	"	60	60
Railway Fastenings....	"	80	"	60	"	60	"	60	60
Billet & Blooms.....	"	115	"	60	"	50	"	30	50
Pig Iron.....	"	110	"	60	"	50	"	30	50
Rivets in Boxes.....	"	115	"	60	"	50	"	30	50
Nails & Spikes.....	"	110	"	60	"	50	"	30	50
Nails, Horse.....	"	110	"	60	"	50	"	30	50

To SAN FRANCISCO, CAL.	RATE IN CENTS PER 100 POUNDS.									
	FROM MISSISSIPPI RIVER.									
	Date.	Rate.	Date.	Rate.	Date.	Rate.	Date.	Rate.	Present Rate.	
Bar Iron.....	7/18/92	110	4/11/93	58	4/12/94	50	4/15/94	40	50	
Cast Iron W. Pipe.....	"	106	"	67	"	50	"	30	50	
Steel Rails.....	"	77	"	58	"	60	"	60	60	
Railway Fastenings.....	"	77	"	58	"	60	"	60	60	
Billet & Blooms.....	"	110	"	58	"	50	"	30	50	
Pig Iron.....	"	106	"	58	"	50	"	30	50	
Rivets in Boxes.....	"	110	"	58	"	50	"	30	50	
Nails & Spikes.....	"	106	"	58	"	50	"	30	50	
Nails, Horse.....	"	106	"	58	"	50	"	30	50	
	FROM MISSOURI RIVER.									
	Date.	Rate.	Date.	Rate.	Date.	Rate.	Date.	Rate.	Present Rate.	
Bar Iron.....	7/18/92	105	4/11/93	54	4/12/94	50	4/15/94	40	50	
Cast Iron W. Pipe.....	"	99	"	68	"	50	"	30	50	
Steel Rails.....	"	72	"	54	"	60	"	60	60	
Railway Fastenings.....	"	72	"	54	"	60	"	60	60	
Billet & Blooms.....	"	105	"	54	"	50	"	30	50	
Pig Iron.....	"	99	"	54	"	50	"	30	50	
Rivets in Boxes.....	"	105	"	54	"	50	"	30	50	
Nails & Spikes.....	"	99	"	54	"	50	"	30	50	
Nails, Horse.....	"	99	"	54	"	50	"	30	50	
	FROM NEW YORK—Via Sunset Line.									
	Date.	Rate.	Date.	Rate.	Date.	Rate.	Date.	Rate.	Present Rate.	
Bar Iron.....	-----	-----	-----	-----	4/25/93	30	8/14/93	40	50	
Cast Iron W. Pipe.....	-----	-----	-----	-----	"	30	"	--	50	
Steel Rails.....	-----	-----	-----	-----	"	60	"	--	60	
Railway Fastenings.....	-----	-----	-----	-----	"	60	"	--	60	
Billet & Blooms.....	-----	-----	-----	-----	"	30	"	--	50	
Pig Iron.....	-----	-----	-----	-----	"	60	8/11/93	30	50	
Rivets in Boxes.....	-----	-----	-----	-----	"	30	"	--	50	
Nails & Spikes.....	-----	-----	-----	-----	"	30	"	--	50	
Nails, Horse.....	-----	-----	-----	-----	"	30	"	--	50	

Bar iron rates were higher than those on steel rails under the schedule in force July, 1892. Since that time they have been much lower from the points mentioned, especially New York to San Francisco, having been, at one time, only half the rate on steel rails. The relation of rates from New York and Chicago has varied materially at different periods. The work of loading and unloading rails is usually done by the consignor and consignee, while bar iron is generally loaded and unloaded by the carrier, and there is more checking required with the latter.

10. Steel rails, being used for railway construction and repair, are often hauled for the carriers' own use. While different rules

prevail, one half cent a ton a mile is usually the basis of charge made by railroad companies against themselves for carrying "company material." Rails are usually loaded on flat cars or in box cars with end doors, but complainant will load them in any cars that may be furnished. Railroads buying rails usually furnish cars for loading and prefer flat cars for greater ease of handling.

11. The table below shows various commodities, rates on which are less than \$1.00 per hundred pounds from New York, Chicago, Mississippi river points and Missouri river points to San Francisco :

TO SAN FRANCISCO, CAL.	RATE IN CENTS PER 100 POUNDS.			
	FROM			
	Chicago.	Miss. River.	Mo. River.	(Via Sunset Route) New York.
Billets and Blooms.....	50	50	50	50
Bar, Rod, Hoop.....	50	50	50	50
Cast Iron W. Pipe.....	50	50	50	50+
Pig Iron.....	50	50	50	50
Rivets in boxes and kegs.....	50	50	50	50+
Nails and Spikes.....	50	50	50	50+
Pitch and Tar.....	50	50	50	50+
Nails, Horse.....	50	50	50	50+
Ties, Baling.....	50	50	50	50+
Steel Rails.....	60	60	60	60
Grease, Axle, in Pkgs.....	65	65	65	65
Railway Fastenings.....	60	60	60	60
Gunny Cloth, compressed in bales.....	75	75	75	75
Felt Roofing.....	75	75	75	75
Logwood.....	75	75	75	75
Pig Lead.....	75	75	75	75
Feldspar in Pkgs.....	75	75	75	75
Bones.....	65	60	55	65
Glass, Window, Common, O. R. B.....	75	70	65	75
Copper, Bar and Ingot.....	70	70	70	70
Lead, Pig.....	75	75	75	75
Paint, N. O. S.....	75	75	75	75
Lye, concentrated.....	75	75	75	75
Shot, in bags.....	75	75	75	75
Oil Cloth (Floor), O. R. B.....	75	75	75	75
Tin Plate.....	75	75	75	75
Sad Iron, in boxes or barrels.....	70	70	70	70
Varnish, N. O. S.....	90	90	90	90
Hames, Wooden, in boxes.....	90	90	90	90
Jute and Jute Butts.....	70	70	70	70
Hemp, in bales.....	75	75	75	75
Lumber.....	75	75	75	75

The above rates from New York also apply *via* Chicago, Ill. & Santa Fe system, except when marked thus, +.

12. Following is a table showing the rates charged on iron articles between various points :

Distances.	From PITTSBURG, PA.,	RATE IN CENTS PER 100 POUNDS.							
		Steel Rails.	Railway Fastenings.	Bar Iron.	Cast Iron Pipe.	Pig Iron.	Billets and Blooms.	Rivets in boxes.	Nails in kegs.
	<i>To</i>								
468	Chicago, Ill. ....	12 <sup>3</sup>	15	15	15	15	15	15	15
	Miss. River.								
619	(E. St. Louis) ....	12 <sup>3</sup>	16	16	16	16	16	16	16
	Mo. River.								
902	Kansas City ....	25 <sup>1</sup>	29 <sup>4</sup>	38	38	24 <sup>9</sup>	38	38	26
	New Orleans ....	28 <sup>2</sup>	47	47	47	41	41	47	47
	<i>From</i> Chicago, Ill.,								
	<i>To</i>								(Per Keg)
912	New Orleans, La. ....	20	21	24	24	---	---	24	23
1093	Denver, Colo. ....	42 <sup>9</sup>	45	---	70	38 <sup>9</sup>	---	---	57
	<i>From</i> Pueblo								
	<i>To</i>								
1225	New Orleans, La. ....	---	45	---	---	38 <sup>9</sup>	---	---	---
1026	Galveston, Texas ....	30	30	46	---	35	---	65	---
	Missouri River, (Kansas City) ....	---	25	---	---	25	---	---	---

13. The following table shows rates on lumber to Colorado common points from the Pacific coast and from Chicago and other points east :

FROM	TO COLORADO COMMON POINTS.	
	Rate in Cents per 100 Pounds.	
	Lumber, C. L.	
Pacific Coast Points.		
(San Francisco) .....		33
Chicago, Ill. ....		33
Mississippi River Points .....		31½
Missouri River Points .....		23
Wisconsin Points.		
Eau Claire } .....		44½
Badger Mills } .....		
Chippewa Falls } .....		
Stiles } .....		

Rates on grain throughout the country are made low for long distances to enable the traffic to move freely from the producing regions to various markets.

14. The following table shows east bound rates from San Francisco to eastern points, on various commodities :

FROM SAN FRANCISCO, CAL., TO	RATES IN CENTS PER 100 POUNDS.						
	Beans.	Canned Goods.	*Deciduous Fruits.	Apples in barrels.	Oranges & Lemons.	Oranges (Seedlings and Mediterranean Sweets only).	Wine, in Wood.
Chicago, Ill. ....	75	65	125	100	125	100	75
Mississippi River .....	75	65	125	100	125	100	75
Missouri River .....	75	65	125	100	125	100	75
New York, N. Y. ....	100	50	150	100	125		50
Denver, Colo. ....	75	65	125	125	112½		75

\* "Deciduous Fruits" include Apples, Apricots, Berries, Cherries, Currants, Figs, Grapes, Guavas, Nectarines, Olives, Peaches, Pears, Plums, Pomegranates, Prunes, Quinces, etc., etc.



15. The evidence does not show exactly the shares of the several roads in the rates from New York, Chicago, Mississippi river points or Missouri river points to San Francisco on any defendant line, but it is to the effect that the divisions are on a basis of constructive mileage west of the Missouri river, and that the Southern Pacific has an arbitrary for the Oakland Bay transfer which is deducted before pro-rating. The rates of 40 cents on steel rails and 33 cents on bar iron, which are asked by the complainant, would give the Southern Pacific and other roads which participate in the traffic from Pueblo to San Francisco more than they receive out of the through rates from Chicago, Pittsburg, or New York.

16. The Southern Pacific Company owns and operates a railroad from New Orleans to San Francisco, 2489 miles, and operates the Central Pacific from Ogden to San Francisco, about 895 miles. The water line from New York to New Orleans controlled by the Southern Pacific is known as the Morgan Steamship Line. Of the through rate of 60 cents per hundred on rails from New York to San Francisco over this water line and the Southern Pacific, the former is allowed for its share about one fifth and about the same proportion of the 50 cent rate on bar iron, the rail line from New Orleans taking the remainder. Of the rates on iron and steel traffic from Chicago *via* the Illinois Central to New Orleans and the Southern Pacific thence to San Francisco, the former receives from 22 to 24 per cent. A shipment of 2000 tons of steel rails was carried by this route during the pendency of this case. The southern route of the Southern Pacific from New Orleans to San Francisco is mostly through a section of country thinly populated, and, though the grades are easier than on its northern route from Ogden to San Francisco, it is as expensive to operate, and probably more so, on account of the difference in cost of supplying coal and water in the two sections.

On the basis of 24 per cent to the Illinois Central, the Southern Pacific receives out of the 60 cent rate on rails shipped through New Orleans from Chicago about 46 cents, equal to about  $3\frac{3}{4}$  mills per ton per mile for 2489 miles from New Orleans, or \$110.40 per car of 24,000 pounds. The rate per ton per mile for the whole distance from Chicago is a little over  $3\frac{1}{2}$  mills, and the

revenue per car is \$144.00. Of a like rate on rails from New York *via* its water and rail route to San Francisco the rail line of the Southern Pacific from New Orleans receives about  $\frac{1}{4}$  or 48 cents, not quite  $3\frac{1}{8}$  mills per ton per mile, or \$115.20 per car of 24,000 pounds.

17. A rate of 40 cents on rails from Pueblo to San Francisco would, based on a distance of 1559 miles, yield the carriers between those points 5.13 mills per ton per mile; and a rate of 33 cents on bar iron would yield them about 4.23 mills per ton per mile. By the short line of 2418 miles, the Chicago rate of 60 cents on rails yields 4.96 mills per ton per mile and the 50 cent rate on bar iron 4.13 mills. Under the rates proposed by complainant from Pueblo the roads therefrom would receive more per ton per mile than upon the traffic from Chicago under existing rates.

On a carload of 24,000 pounds of rails a rate of 40 cents from Pueblo to San Francisco would give a car revenue per mile of 6.157 cents, or a total for the whole distance of \$96.00 per car. The same carload weight of bar iron from Pueblo to San Francisco at a 33 cent rate would afford a revenue per car per mile of 5.080 cents, or a total car revenue of \$79.20. The revenue per car per mile and total car revenue from Chicago to San Francisco on rails and bar iron is: Rails, per car per mile, 5.955 cents; total car revenue, \$144.00. Bar Iron, per car per mile, 4.962 cents; total car revenue, \$120.00. Though the distance from Pueblo to San Francisco is only  $64\frac{1}{2}$  per cent of the distance from Chicago to San Francisco, the total revenue per car under proposed rates from Pueblo would be, on rails,  $66\frac{2}{3}$  per cent of the revenue of a like car from Chicago and, on bar iron, 66 per cent of that of a like car from Chicago. The existing rate of \$1.60 from Pueblo comes to \$384.00 per car, and is  $2\frac{1}{2}$  times greater on rails and  $3\frac{1}{4}$  times greater on bar iron than from Chicago. The same terminal cost of handling arises at San Francisco, wherever the shipments originate. There is no evidence showing greater terminal expenses to the carriers at Pueblo than at Chicago and other points of origin east of Pueblo. After the cars are lined up in trains, billed and routed from Pueblo to San Francisco, a distance of over 1500 miles, the carriers between those points are at no

greater expense in the haul to and delivery at San Francisco than they are for like freight brought to them at Pueblo from Chicago or other points.

18. Articles known as low class freight, and which, if they move, require and are generally given comparatively low rates, yield revenue below the average per ton per mile for all freight. They usually move in full carloads, so that the capacity of the car is wholly utilized. The risk of the carrier is less by far than in the case of high class freight. The rates on certain iron and steel articles, substantially such as are covered by the complaint in this case, between various points hereinbefore set forth show that these commodities are generally regarded by carriers as among the lowest kinds of freight. The average cost throughout the country of carrying all classes of freight in the year ending June 30, 1893, was 5.79 mills, and the average revenue per ton per mile was 8.78 mills, and in the year ending June 30, 1894, the average revenue per ton per mile was 8.60 mills. The operating expenses were less per mile in 1894 than in 1893. The average cost and receipts per mile on the heavy low grade freights, including iron and steel articles, cannot be precisely stated, but were manifestly much less than the average for all traffic.

The following table shows the average receipts per ton per mile on all classes of traffic, gross earnings per mile, total operating expenses per mile, cost of conducting transportation per mile, and ratio of cost of conducting transportation to total operating expenses, for the various defendant roads during the year ending June 30, 1894:

DATA COMPILED FROM ANNUAL REPORTS OF ROADS NAMED, FOR  
THE YEAR ENDING JUNE 30, 1894

NAME OF ROAD.	Average receipts per ton per mile.	Gross earnings from operation per mile of line.	Operating expenses per mile of line.	Cost of conducting transportation per mile of line.	Ratio of cost of conducting transportation to total operating expenses.
	<i>Cents.</i>	<i>Dollars.</i>	<i>Dollars.</i>	<i>Dollars.</i>	<i>Per Cent.</i>
Atchison, Topeka & Santa Fé R.R.	00.979	4819.84	3470.46	1758.66	50.67
Atlantic & Pacific R. R. ....	01.003	3313.90	3188.77	1647.25	51.66
Colorado Midland R. R. ....	01.900	4056.93	3822.22	1993.06	52.15
St. Louis & San Francisco Ry.	01.143	4619.27	3063.89	1566.74	51.14
Chicago, Burlington & Q. R. R.:					
Line East of Missouri River ..	00.783	8116.70	4751.59	2572.77	54.13
Line West of Missouri River ..	01.324	2807.23	1874.89	536.09	49.93
Chicago, Rock Island & Pac. ....	00.989	5541.15	3813.10	2146.88	54.46
Denver & Rio Grande R. R. ....	01.584	3894.71	2414.26	1281.97	53.10
Rio Grande Western Ry. ....	01.405	3977.03	2667.05	1393.36	52.29
Southern Pacific Co.:					
Atlantic System. ....	00.909	5835.48	4037.08	2166.50	53.67
Pacific System. ....	01.319	6742.67	4142.73	2176.58	52.54
Union Pacific Ry.:					
Union & Cheyenne Div. ....	00.964	10713.18	6791.76	3417.54	50.32
Kansas Div. & Leavenworth B'h.	00.998	4196.54	2861.09	1279.31	44.71

The ratio of cost of conducting transportation (movement of the traffic) to total operating expenses for all the roads of the country for the year ending June 30, 1893, was 52.65 per cent, and for the year ending June 30, 1894, it was 53.98 per cent, greater with two exceptions than that shown for the defendant roads in the above table. The ratio of cost of conducting transportation to

total expenses includes passenger as well as freight movement. The rate per ton per mile under the 60 cent rate on rails from Chicago is, as before shown, 4.96 mills. If the total cost for transporting this article of freight were fully up to the average of 5.79 mills per ton per mile for the fiscal year, 1893, which, by reason of the facts found and hereinbefore stated, it cannot be, the rate per ton per mile of 4.96 mills from Chicago would still be about 1.90 mills per ton per mile above the average cost of conducting transportation. The 4.13 mill rate per ton per mile on bar iron from Chicago would also be considerably above the average of such cost for that year. The rate per ton per mile from Pueblo to San Francisco under a 40 cent rate per hundred on rails would, as stated above, be 5.13 mills.

All rates per ton per mile in this report are computed on the basis of 2000 lbs. to the ton, though many of the rates, as stated in rate sheets, are per ton of 2240 lbs.

#### CONCLUSIONS.

The defendants are subject to the provisions of the Act to Regulate Commerce.

No proof has been offered with a view to reparation, and no order will be made in respect thereto.

The offsetting of natural disadvantages of a business at one place as compared to a like business at another, by discrimination in freight charges, is inconsistent with the equality provisions of the statute. Therefore the excess of cost to the complainant in manufacturing its products at Pueblo over that to its competitors in other localities by reason of inferiority of its coal and iron ore, the structure or condition of its plant and cost of labor, or other like causes, is not to be considered in ascertaining the rightful relative adjustment of rates from such places, though such facts may emphasize the necessity to complainant's business of the removal of undue artificial barriers added to natural disadvantages.

It is consistent with the law for a carrier, within reasonable limits, to accept less per ton per mile upon long hauls than upon short ones and to widen the disparity between such rates as the difference in distance increases. Hence the proportion received by some of the carriers out of a long distance through rate is not

necessarily the measure of the through rate which such carriers are entitled to make over a materially shorter distance, though such proportion is an important consideration in determining the rightful relation of the two through rates.

Unreasonable disparity between the rates on hauls of different length to a common destination, whether by one carrier or by more than one jointly, resulting in undue advantage to one locality or business or disadvantage to another, is unlawful.

The competition of water routes, so much relied upon by the defense, is altogether inadequate to account for the general relatively low rating of lumber, grain, and other staple or heavy goods to or between inland points, and that of a long list of commodities, including iron and steel, to San Francisco from Chicago and so-called Mississippi river and Missouri river points, from none of which can shipments be made by water to San Francisco without transfer and the use of considerably more time than by rail. Many of these points are not situated so that consignments by water can, with any considerable degree of constancy or in any practicable sense, be made at all. Although water or water and rail rates from New York to San Francisco may, at times, be so low that in conjunction with low rates from interior points to the seaboard they divert some traffic from the direct rail lines from such points, yet if, as is claimed, they be so to the extent of affecting transportation from Chicago, Mississippi river, and Missouri river points, possibility of shipping by railroad at rates shown in the findings from Pueblo to Galveston and thence by water also exists. This port is much nearer than New York to Panama, and vessels from it may sail around Cape Horn as well as from New York. Moreover, the southern route of the Southern Pacific is crossed by the Union Pacific, Denver & Gulf and its connections from Pueblo to Galveston at a point far west of New Orleans, where the Southern Pacific connects with its steamer line from New York, and with the Illinois Central from Chicago.

But this case rests upon broader grounds than possible availability of competition by such rail and water route. The disparity between higher rates for short hauls than lower ones on long hauls, the latter involving greater service and expense on the part of the carrier, is usually defended upon the ground, where competition of other carriers is set up, that unless the

lower rate is made the traffic will not move by the defendant's line but will be secured by its competitors. Whatever may be the merits of this defense, it would seem that better cause exists for lower rates where, under higher ones, the traffic is subjected to such disadvantage or prejudice that it will not move at all. Such is the situation developed in the case under consideration. The rates in force from Pueblo to San Francisco prohibit the movement of iron and steel articles from the former place to the latter, while greatly lower rates from other, though far more distant points, prevail. While some of the relatively low rates on low class commodities, including iron and steel, are lower because of competition by water than they would otherwise be, the general comparatively low rating applied to them is largely due to the character of such commodities, the use to which they are put, the demand for them in large quantities throughout the country, their susceptibility of movement at less cost and risk to the carrier than high class and more valuable freight, and other like conditions. It is to the interest of the carriers as well as the public, that their rates be low enough, if not below a remunerative point, to permit the general movement and distribution of these commodities in general demand in large quantities for construction, building, manufacturing, and other purposes. Reasonable freedom of such movement and distribution stimulates the growth and development of the country and thereby promotes all interests. The general prevalence of such lower rates on this character of freight is due to the carriers' usual policy of making rates that will fairly permit the traffic to move, if of such value that it will bear reasonable charges.

Rates on steel rails and other low grade freights of the character stated, yielding per ton per mile the average received on all freight, would be unjust. The value of the goods, the cost of the service, the degree of risk to the carrier, among other considerations, have important bearing upon the relation of rates on different kinds of traffic as well as the reasonableness of the rate on a specific article.

It is contended by the complainant that but for the obstructive position taken by the Southern Pacific, the rates complained of herein would not have been made so high, and some of the testimony tends to show that it may be for the interest of the South-

ern Pacific to encourage iron and steel traffic *via* New Orleans so as to obtain for itself a longer rail haul and greater compensation than on such traffic routed *via* Ogden and its Central Pacific division. However this may be, discriminations and prejudices both as to rates and facilities have sometimes been found to result from the apparent interest of carriers to secure freight at points situated with reference to the place of destination so as to give a long haul, though at lower rates than a much shorter one at higher rates, the former yielding greater aggregate revenue. Inequality in treatment of shippers and localities, having no other justification than this end, is indefensible.

It may fairly be assumed that the employment of five thousand men by the complaining company is the basis of support of probably fifteen to twenty thousand persons. Its business results largely in developing the natural resources of a state; it makes material mostly used in the industrial trades and on railroads themselves in construction and repairs; it is located about one thousand miles nearer to San Francisco, the chief market on the Pacific coast, and one of the great iron and steel markets of the world, than any of its competitors. It cannot move its plant to other localities more favored by transportation interests. These facts do not entitle it to different consideration in respect of just rates than small concerns and individuals are entitled to, but they help to illustrate the far reaching extent to which serious injury may be unjustly effected, directly and indirectly, by methods and practices which the statute was designed to prohibit. In a case of alleged unreasonableness and injustice in the relation of transportation charges, the character of the goods and the competition of like traffic at common points of sale are as well entitled to consideration as the competition of carriers. Whether the comparatively low rating generally applied to iron and steel commodities is due to water competition, railroad competition, market or commodity competition, arbitrary or long used customs of rate making, or the inherent nature of the traffic itself, or all of these, the reasonableness or justice of rates charged to one shipper or from one locality must be determined upon all the material considerations which affect the interests of the shipper and carrier in the traffic and its movement.

As to the shipment of iron and steel from foreign countries to



San Francisco at low rates by water, such foreign product affects the industry at Pueblo as well as at eastern points in respect to participation in supplying that market.

Our conclusion is that the rates in question are unreasonable and unjust, and that they subject complainant, the localities in the state of Colorado where its industry is carried on, and its traffic in iron and steel articles to San Francisco, to undue and unreasonable prejudice and disadvantage, and result in giving undue preference and unreasonable advantage to other shippers in the United States of iron and steel over the defendant roads to San Francisco.

The defendants carrying from Pueblo westward practically concede in their answers that rates in effect from the east to San Francisco should be allowed from Pueblo. It is also conceded that the share of the carriers from Pueblo in the rate of 60 cents on rails and like traffic and that of 50 cents on bar iron and other iron articles from points in the east, of which Chicago is an example, is slightly less than the rates of 40 cents on rails and 33 cents on bar iron insisted upon by the complainant. The terminal expenses incident to supplying cars for loading, routing, billing and lining the cars into trains, and the like, as well as a difference in the distance in the two hauls, affecting, as it does, the rate of cost per ton per mile, must all be taken into account in fixing rates for this shorter distance. The revenues per ton per mile which would be afforded by the proposed 40 and 33 cent rates per hundred from Pueblo compare favorably with the receipts per ton per mile derived by other roads on their iron and steel traffic generally under rates shown to be in force.

It is shown by the findings that the all rail rate to San Francisco on steel rails is 60 cents from New York by at least one of the all rail lines, and that by all of the lines the rates on rails are 72.3 cents from Pittsburg, 72 cents from Columbus, 60 cents from Chicago, 60 cents from St. Louis and other Mississippi river points (58 at the beginning of this case), and 60 cents from Omaha or Kansas City and other Missouri river points (54 cents at the beginning of this case). In our opinion a much less rate can well be afforded and should be made by the carriers from Pueblo, a point farther west by a great many miles than any of the points just mentioned.

Taking all the facts and circumstances into consideration and making due allowances therefor, we think the rates from Pueblo to San Francisco should not exceed 45 cents per hundred pounds on steel rails and railway fastenings or  $37\frac{1}{2}$  cents per hundred pounds on bar iron, cast iron water pipe, pig iron, billets, blooms, rivets, nails, and spikes, nor should the rates from Pueblo to San Francisco on such traffic or on other iron and steel articles be greater at any time than 75 per cent of rates contemporaneously in force on like traffic from Chicago to San Francisco over any of the defendant roads. An order to this effect will be entered.

The percentage relation fixed in the foregoing order is confined to rates from Pueblo and Chicago in the expectation that the present relation of rates applying to San Francisco from Chicago, Columbus, Pittsburg, and other eastern points over the various routes in use will not be changed in such manner as to result in new injustice to Pueblo, but to guard against such a contingency this case will be held open for such further proceedings or action as may, at any time, appear necessary.

Wide disparity in the relative rates on various iron and steel articles, of which bar iron and steel rails may be taken as examples, is shown by tables set out in the findings, rails taking higher rates to some points and bar iron higher rates to other points. This matter cannot be treated at this time for want of sufficient evidence, but the case will also be held open for any required action in regard thereto, and nothing in the order now issued shall prevent the carriers from changing the rates on these commodities within the maximum rate provided for rails from Pueblo to San Francisco, and as they may be advised is lawful from other localities.

The methods adopted by the carriers in establishing rates to Pacific coast points from all points between Chicago or the Mississippi river and the Atlantic seaboard are open to very serious criticism. These rates are mostly indicated in numerous circulars showing the basis of making the rates and are intended to stand as tariffs. Mere designation in a paper or circular of the means of arriving at rates by calculation or reference to other papers or tariffs does not constitute the rate sheet required to be published and filed by section six of the law. These circulars may be instructive to agents and contain information helpful to this

Commission, in connection with properly framed schedules containing definite statements of rates in force, but, standing alone, they are neither specific nor capable of easy interpretation. Another reprehensible practice is that of a carrier reissuing the tariff of another line and by a supplement concurrently issued limiting its use of the rates therein prescribed to such as are over a specified minimum. Some of the rate sheets, obscure in themselves, have been so changed by numerous amendments and supplements as to make it impracticable to determine with certainty what rates are in force over the roads to which they apply. The only satisfactory method of publishing rates is to definitely state the charges fixed between points clearly specified, without burdening and confusing the public with involved calculations, or with scrutinizing a series of supplements to determine whether a particular rate has been changed since the original tariff was issued. The carriers are expected to remedy the defective character of their rate schedules, both as to form and contents, without delay.

MILTON EVANS V. THE UNION PACIFIC RAILWAY COMPANY AND S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, JOHN W. DOANE, AND FREDERIC R. COUDERT, Receivers of said UNION PACIFIC RAILWAY COMPANY; THE OREGON SHORT LINE & UTAH NORTHERN RAILWAY COMPANY individually and as operating the railroad and steamboat lines of THE OREGON RAILWAY & NAVIGATION COMPANY, AND S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, JOHN W. DOANE, AND FREDERIC R. COUDERT, Receivers of said OREGON SHORT LINE & UTAH NORTHERN RAILWAY COMPANY; THE OREGON RAILWAY & NAVIGATION COMPANY, AND EDWIN McNEILL, the Receiver of said OREGON RAILWAY AND NAVIGATION COMPANY.

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H. D. MAY V. EDWIN McNEILL, Receiver of THE OREGON RAILWAY & NAVIGATION COMPANY, AND THE OREGON RAILWAY & NAVIGATION COMPANY.

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*Decided February 8, 1896.*

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1. Prior leave of a court which has appointed the receiver of a railroad company is not necessary to entitle a shipper to complain against such receiver

in a proceeding before the Commission, nor is such leave necessary to give the Commission jurisdiction in such a proceeding.

2. A showing of substantial similarity in transportation conditions is necessary to make the rates of carriers in sections of the country other than that served by the defendant road proper standards of comparison in a case of alleged unjust and unreasonable charges.
3. Principles laid down in *Morrell v. Union Pac. R. Co.* 4 Inters. Com. Rep. 469, 6 I. C. C. Rep. 121, and *Newland v. Northern Pac. R. Co.* 4 Inters. Com. Rep. 474, 6 I. C. C. Rep. 181,—reaffirmed and applied in these cases.
4. Upon complaints of unreasonable and unjust rates for the transportation of wheat from Walla Walla and Dayton, Wash., to Portland, Or., and after investigation and consideration of all the facts and circumstances in each case,—*Held*: That the rates complained of were unjust and unreasonable; that reduced wheat rates put in force between said points during the pendency of these proceedings are still above reasonable and just charges for the service rendered; that the wheat rate from Walla Walla to Portland should not exceed 19½ cents per hundred pounds, or \$3.90 per ton; and the rate for the somewhat longer distance from Dayton to Portland should not exceed 20 cents per hundred pounds, or \$4.00 per ton. Complainants' claim for money reparation denied.

(Nos. 384, 391.)

*W. H. Reed* for complainant Evans.

*Turner, Graves, & McKinstry* and *Richard H. Ormsbee* for complainant May.

*W. R. Kelly* for Union Pacific Railway Company, Oregon Short Line & Utah Northern Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, as Receivers of the Union Pacific Railway Company, Oregon Short Line & Utah Northern Railway Company, and Oregon Railway & Navigation Company.

*Cox, Cotton, Teal, & Minor* for Oregon Railway & Navigation Company and Edwin McNeill, the Receiver thereof.

## REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner* :

The complaint in the case of Evans, filed June 15, 1894, alleges that the defendants charged and demanded an unjust and unreasonable rate of \$4.70 per ton for the transportation of wheat in carloads shipped over their railroad from Walla Walla, in the State of Washington, to Portland, in the State of Oregon, a distance of 246 miles; and that a just and reasonable charge for such service should not exceed one cent per ton per mile, or \$2.46 per ton, the shipper loading and the consignee unloading the freight; that the petitioner on June 2, 1894, shipped from Walla Walla to Allen & Lewis at Portland 20,150 pounds of wheat in Union Pacific Car No. 35,072, on which he paid under protest the said rate of \$4.70 per ton, although he tendered for such transportation "a just and reasonable fee or price" in the amount of one cent per ton per mile, or \$2.46 per ton. The petitioner prays that a reasonable rate be determined and fixed; that such rate be established "at \$2.46 per ton for said shipment and for like shipments hereafter; and that the sum of \$2.24 per ton, or \$22.57, the total excess over a just and reasonable rate which complainant was obliged to pay, be awarded to him" and ordered paid.

The petitioner Evans also sets forth in his complaint that he is the same petitioner who asked for a reduction of freight rates in the case entitled *Milton Evans v. Oregon Railway & Navigation Company*, decided by the Commission on December 3, 1887, wherein the Commission required said company to cease from charging more than 23½ cents per hundred pounds on wheat from Walla Walla to Portland, "during the present grain season;" and to which said requirement of the Commission was appended the following statement: "The order is also made in this form as to the present grain season upon the statement in the answer of the defendant that further reductions on wheat rates are intended to be made by defendants as soon as this can be done and upon the general course of dealing of defendant, as shown in the proofs, that the rate for the next season on wheat will doubtless be further modified." The petitioner now alleges that said company did not make a further reduction the next season, nor has it

since made any reduction whatsoever from its said rate of \$4.70 per ton (23½ cents per hundred pounds) on grain from Walla Walla to Portland.

Edwin McNeill, named in the title of this case as the receiver of the Oregon Railway & Navigation Company, had not been appointed as said receiver when the complaint was filed, but notice of such appointment on or about June 28, 1894, having been filed by complainant's counsel, order was entered by the Commission on July 7, 1894, making said receiver a party defendant and directing that he be served with a copy of the complaint and the usual notice to satisfy the same or file answer thereto within twenty days.

The defendant, the Union Pacific Railway Company, denied, in its answer, that it did then or that it had at any time "owned, controlled, or operated in any manner any line of railway extending into or through the States of Washington or Oregon or either of them," and said defendant further averred that since October 13, 1893, its railway properties had been in the possession of and operated by the defendants, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, as receivers duly appointed by the United States circuit court for the district of Nebraska.

The answer of the defendant, the Oregon Short Line & Utah Northern Railway Company, denies that it was on June 2, 1894 (when the car of wheat was shipped by complainant), engaged in operating any railroad. It avers that prior to October 13, 1893, it was operating as lessee the railroad and steamboat lines of the Oregon Railway & Navigation Company, including its railway between Walla Walla and Portland, but that since the date last mentioned S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, have, as duly appointed receivers, been in full possession, control, and operation of all the properties of the defendant.

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert filed answer as receivers of the following-named defendants: The Union Pacific Railway Company, the Oregon Short Line & Utah Northern Railway Company, and the Oregon Railway & Navigation Company. This answer, in substance, generally denies the violations of law

alleged in the complaint. These defendants also say that the order of the Commission, mentioned in the complaint and issued in the case of Evans in December, 1887, was made at a date on or prior to their appointment as receivers for the defendant railroad companies "and at a time when the circumstances and conditions surrounding the transportation of grain in the territory specified were entirely dissimilar from those surrounding such transportation on the date charged in the petition, to-wit, June 2, 1894." The receivers state further that on October 13, 1893, and subsequently, they were appointed by courts of the United States receivers of all the railway lines and properties of said defendants; that under an order of the United States Circuit Court for the District of Oregon, issued on December 26, 1893, they have since that date kept the accounts of the Oregon Railway & Navigation Company separate and distinct from those of other companies for which they were acting as receivers, and that from and after such last-mentioned date their operation of the Oregon Railway & Navigation Company's properties has been solely as receivers of said company, and not as receivers of the Oregon Short Line & Utah Northern Railway Company, lessor (lessee) of said Oregon Railway & Navigation Company. This answer further shows the appointment on or about July 3, 1894, of Edwin McNeill as sole receiver of the Oregon Railway & Navigation Company and his sole operation of the properties of that company as receiver thereof since July 4, 1894. These defendants also claim that by reason of this new receivership they are powerless to obey any order entered by the Commission for the relief of the petitioner or the reduction of the rate complained of.

The answer of Edwin McNeill, receiver of the Oregon Railway & Navigation Company, also denies generally the violations of law charged in the complaint. Further answering, this defendant says, in substance, as follows: That the railway between Walla Walla and Portland, a distance of 246 miles, is constructed, for the most part, through a rugged and mountainous country with extraordinary grades and curves, and is operated at exceptionally great expense; that for the distance of 88 miles between Portland and Dalles City the road runs across the Cascade Mountains; that during the winter season operation of this part of the railroad is frequently interrupted by storms, snow blockades, and



earth slides, thereby subjecting the company to extraordinary expense; that between Dalles City and Walla Walla the road for the greater part of the way runs through an unproductive desert. is subject to obstructions by snowdrifts, and the ties and bridge substructures must frequently be renewed on account of alkali in the soil; that most of the freight shipped over the line of the Oregon Railway & Navigation Company consists of wheat; that, owing to lack of storage facilities at the point of shipment and the manner of transporting wheat from tidewater, it is necessary that the whole wheat crop should be moved within a comparatively short time after the harvest, and that during the remainder of the year but little wheat and a comparatively small amount of other freights are shipped from the vicinity where the wheat is grown; that, on account of small freight traffic to the wheat producing region, cars for shipping the wheat to Portland are hauled empty from Portland to Walla Walla; that the cost and expense of fuel and labor on this railway greatly exceeds such cost to railroads of the United States generally; that the competition caused by the construction during and since the year 1888 of other lines of railway through the States of Washington and Oregon has greatly decreased the wheat and other traffic of this company, and that its earnings since 1888 have largely decreased; that in 1893 it failed to pay interest on its bonded indebtedness, and the suit in which this receiver was appointed was brought to foreclose the first mortgage lien upon the property; that a large portion of the road was washed out by a flood in the Columbia river in the spring of 1894, and this prevented operation during the month of June of that year of about 145 miles of the line; that for the purpose of making up the deficit of earnings as compared with expenses, and making repairs to the road, this receiver has obtained leave of the court to issue receiver's certificates to the amount of \$500,000, which certificates will constitute prior liens upon the property; that authority has also been obtained from the court to issue receiver's certificates and thereby obtain funds with which to pay defaulted interest on the company's first mortgage bonds; that the Northern Pacific Railroad Company, mentioned in the answer as a principal competitor of this company for the transportation of wheat, has also, as this receiver is informed and believes, made default in the payment of interest on

its bonded debt; that suit to foreclose mortgages on the property of that company has been commenced; that it would be unjust and unreasonable to make any reduction in the wheat rate from Walla Walla to Portland, as prayed for herein.

The complaint in the case of May, filed September 4, 1894, is brought only against the Oregon Railway & Navigation Company and Edwin McNeill, the receiver thereof. The petitioner alleges that a rate of \$4.75 per ton, established and charged by defendants for the transportation of wheat in carloads from Dayton, in the state of Washington, to Portland, in the state of Oregon, is unjust, unreasonable, excessive, and extortionate; that said rate was exacted from the petitioner by the defendants for the carriage of 20,065 pounds of club wheat, shipped as a carload by him over defendants' line from Dayton to Portland on August 11, 1894, in a car numbered 35,218, and consigned to Allen & Lewis, General Commission Merchants, at Portland, Or.; that the total sum exacted for the transportation of said wheat was \$47.65; that petitioner was required to load and unload the wheat, which he did at an expense of 50 cents per ton, and all the service performed by the defendants was to haul said car from Dayton to Portland; that said carload of wheat was sold by petitioner in Portland on or about August 22, 1894, for the sum of 36 cents per bushel, its full market value; that said rate of \$4.75 per ton was at least \$1.92 more than a reasonable charge; that petitioner desires to ship other large quantities of wheat from Dayton to Portland, but defendants refuse to transport the same or any wheat for petitioner at just and reasonable rates, or at any rate less than the unjust and unreasonable charge of \$4.75 per ton, which, added to a cost to petitioner of 50 cents for loading and unloading makes the total cost of getting his wheat to Portland \$5.25 per ton, or 26½ cents per hundred pounds; that such transportation charge, under the market price of wheat, is prohibitory and ruinous. The petitioner prays that the rate complained of be adjudged unreasonable, unjust, excessive, and extortionate; that defendants be ordered to refund to petitioner \$1.92 per ton, or \$19.26, from the charge exacted of him for the transportation of the carload of wheat above mentioned; that defendants be further ordered and required to transport wheat for petitioner from Dayton to Portland at a rate of one cent per

ton per mile, or \$2.82 per ton, and that this Commission fix and establish a reasonable rate on wheat over defendant's line between those points.

The answer of Receiver McNeill avers that he has since, on or about July 3 and July 10, 1894, under orders of United States courts for the districts of Oregon and Washington, been in possession of and solely operating the lines of the Oregon Railway & Navigation Company, and that no application has been made by the complainant in this proceeding to either of said courts for an order permitting him to sue this receiver, and that no order authorizing the institution of this proceeding has been granted by either of said courts. Said receiver thereupon claims that this proceeding against him as receiver is unauthorized, and that the Commission is without jurisdiction to hear and determine any of the matters presented by the petition herein. Further answering, but "without waiving any of the matters and things already set forth by this answer," the receiver, in substance, generally denies the violations of law alleged in the complaint.

The Oregon Railway & Navigation Company denies, in its answer, that it has been engaged at any time since July 10, 1894, as a common carrier over any part or portion of the railway mentioned in the complaint. This company also denies that the rate of \$4.75 per ton for transporting wheat from Dayton to Portland is unjust, unreasonable, excessive, and extortionate.

These cases were heard together with the understanding that the testimony taken in either case should be considered in the other so far as applicable.

The answer in the *May Case* questions the right of the complainant to maintain a proceeding against Receiver McNeill and the jurisdiction of the Commission to entertain such a proceeding, without prior leave of the court, or one of the courts, which appointed said receiver. At the hearing, and in his brief, counsel for the receiver objected on the same ground to our jurisdiction in both cases. Receivers of railroad companies are common carriers subject to the prohibitions and requirements of, and to regulation under, the provisions of the Act to Regulate Commerce. *Independent Refiners' Assn. v. Western N. Y. & P. R. Co.* 6 I. C. C. Rep. 378; Eighth Annual Report of Interstate Commerce Commission, pp. 41-44, 4 Inters. Com. Rep. 880.

Any person is authorized to complain by petition to the Commission against "any common carrier subject to the provisions of this Act," and it is "the duty of this Commission to investigate the matters complained of" and "to make a report in writing in respect thereto." The objection to jurisdiction is overruled.

The complainant Evans did, as alleged herein, bring a proceeding in 1887 against the Oregon Railway & Navigation Company involving the wheat rate from Walla Walla to Portland, and in compliance with our decision in that case the defendant reduced its wheat rate from Walla Walla to Portland for the season of 1887-88 to  $23\frac{1}{2}$  cents per hundred pounds, or \$4.70 per ton; but such rate was not further reduced, in accordance with the then expressed expectation of the Commission, until after the institution of these proceedings in 1894. On August 20, 1894, answers in these cases having been filed, Receiver McNeill reduced the rate from Walla Walla of  $23\frac{1}{2}$  cents a hundred, or \$4.70 per ton, to  $21\frac{1}{2}$  cents a hundred, or \$4.25 a ton, and the rate from Dayton of  $23\frac{1}{2}$  cents a hundred, or \$4.75 per ton, to  $21\frac{1}{2}$  cents a hundred, or \$4.25 a ton. The relief demanded in these cases has therefore been partially conceded, but whether the reductions made by the defendant receiver were sufficient under the proofs which have been adduced, and what reparation, if any, should be made to the complainants, are matters now to be determined.

Wheat rates over this road to Portland have also been the subject of controversy in two other cases, decided by the Commission in 1893 and 1894: *Morrell v. Union Pac. R. Co.* 4 Inters. Com. Rep. 469, 6 I. C. C. Rep. 121; *Newland v. Northern Pac. R. Co.* 4 Inters. Com. Rep. 474, 6 I. C. C. Rep. 131. In the first case of Evans against the Oregon Railway & Navigation Company, and in the two cases just cited, the physical condition of this road to Portland was shown and stated in the decisions. It was found, in substance, that the grades on the portion of the road from Walla Walla to Portland are light, and that on that portion of the system northerly of Walla Walla the grades are heavy in both directions. In winter the operation of the road is liable to interruption from snowdrifts. The road or a portion of it between Walla Walla and Portland is also subject to sand drifts and earth slides, and alkali in the soil increases somewhat

the natural deterioration of ties and wooden substructures. The Oregon Railway & Navigation route to Portland is not only much shorter but less expensive to operate than the route *via* the Northern Pacific to Portland.

The other facts deemed material to the decision of these cases are as follows :

**FACTS.**

1. The complainant, Milton Evans, is a grower of wheat in or near Walla Walla county, in the state of Washington, and a shipper of that commodity in carloads from Walla Walla aforesaid to Portland, Or., over the road of the Oregon Railway & Navigation Company, a distance of about 245 miles. The complainant, H. D. May, is also a grower of wheat at or near Dayton, Columbia county, in the state of Washington, and a shipper of that article from Dayton aforesaid to Portland, Or., over the road of the Oregon Railway & Navigation Company, a distance of about 283 miles.

Complainant Evans did ship, as alleged in his complaint, a carload of wheat billed at 20,150 pounds from Walla Walla to Portland, on June 2, 1894, consigned to Allen & Lewis, and he was required to pay for the transportation thereof the sum of \$47.35, equal to \$4.70 per ton, or 23½ cents per hundred pounds. This charge, which was regularly in force over the road for the service rendered between said points, was exacted by or for the defendants, S. H. H. Clark, Oliver W. Mink, John W. Doane, E. Ellery Anderson, and Frederic R. Coudert, as receivers of the Oregon Railway & Navigation Company, who were shortly afterwards (on or about July 4, 1894) succeeded in that capacity by the defendant, Edwin McNeill, as sole receiver.

Complainant May did ship, as alleged in his complaint, a carload of club wheat weighing 20,065 pounds, from Dayton aforesaid to Portland on August 11, 1894, consigned to Allen & Lewis, and he was required to pay for the transportation thereof the sum of \$47.65, equal to \$4.75 per ton, or 23½ cents per hundred pounds. This charge, which was regularly in force over the road for the service rendered between said points, was exacted by or for the defendant, Edwin McNeill, as receiver of the Oregon Railway & Navigation Company.

2. The population of the State of Washington was in 1880 75,116, and it had increased in 1890 to 349,390. In 1880 Walla Walla, Columbia, Whitman, and Spokane counties, that part of the State lying east of the Columbia river and south of the Columbia and Spokane rivers, a large portion of which is served by the Oregon Railway & Navigation Company's rail lines, had a population of about 27,000. These counties, including those set off since 1880, had a population in 1890 of over 96,000.

The population of the State of Oregon was, in 1880, 174,768, and it had increased in 1890 to 313,767. In 1880, that part of the State lying just south of the Columbia river and as far west as Portland, and which is penetrated by the Oregon Railway & Navigation Company's rail lines, namely, Umatilla, Wasco, and Multnomah counties, had a population of 45,930, and, including counties set off since 1880, the population of this portion of the State was over 107,000 in 1890.

3. The acreage and production of wheat in these States for the years 1883 to 1894, inclusive, as shown by reports of the Secretary of Agriculture, were as follows:

WASHINGTON.			OREGON.	
Year.	Acreage.	Production.	Acreage.	Production.
1883.....	170,200	3,182,700	795,300	13,122,400
1884-5.....	424,276	7,412,000	876,102	13,916,000
1886*.....	-----	7,560,000	-----	11,133,000
1887.....	463,610	8,345,000	920,026	16,100,000
1888.....	486,791	9,006,000	892,425	14,548,000
1889.....	415,500	6,856,000	845,000	13,689,000
1890.....	436,275	8,071,000	887,250	13,865,000
1891.....	698,040	12,216,000	692,055	13,149,000
1892.....	523,530	9,005,000	622,850	9,779,000
1893.....	486,883	9,883,725	616,622	10,790,885
1894.....	548,700	9,108,420	589,891	10,441,071

\*Acreage not given.

The annual output in eastern Washington and eastern Oregon varies from about 300,000 to 420,000 tons, or, on the basis of 60 pounds per bushel, from about ten million to fourteen million bushels.

A considerable portion of the acreage in Walla Walla and

Columbia counties is "summer fallowed" each year. This practice has its effect upon the number of acres seeded from year to year. As shown above, changes in the yearly acreage are not permanent. The wheat acreage of this State in 1888 was reduced over 70,000 acres in 1889, but next year it increased 20,000 acres, and in 1891 it rose to more than 200,000 acres above that of 1888, falling again in 1892 and 1893, so that in the latter year the acreage was practically the same as in 1888. But on account of yearly variation in the yield per acre decreased acreage does not necessarily result in smaller total crop. On the basis of the foregoing statement of acreage and production, the average number of bushels raised per acre in Washington, 1888 to 1894, inclusive, was 18.5 bushels in 1888; 16.5 in 1889; 18.5 in 1890; 17.5 in 1891; 17.2 in 1892; 20.3 in 1893; 16.6 in 1894. The average yield per acre in Walla Walla and Columbia counties in 1894 is estimated at from 18 to 20 bushels, and the acreage for those counties does not appear to have been increased that year over the year preceding. With the same acreage for the whole State in 1893 as in 1888, the crop of 1893 was greater by over 875,000 bushels, and with about 36,000 less acres planted in 1893 than in the year preceding, the crop of 1893 was more than 875,000 bushels in excess of that in 1892. The wheat crop of Washington, allowing for the extraordinary showing of good and bad years, has been increasing since 1883.

4. The wheat-shipping season is usually from September 15 to January 15, though some wheat is shipped as late as March. Wheat in various quantities is also the subject of shipment during other months of the year. Wheat was carried over the Oregon Railway & Navigation Company's lines in 1886 and 1887 and during the seasons of 1891-2, 1892-3, 1893-4, 1894-5, as follows: 1886, 5,204,446 bushels; 1887, 3,750,802 bushels; 1891-2 season, 3,634,367 bushels; 1892-3 season, 9,469,578 bushels; 1893-4 season, 5,579,324 bushels; 1894-5 season,—July 4, 1894, to February 28, 1895,—8,370,043 bushels. These figures for 1892-3 and subsequent seasons represent large percentages of the total wheat crops in the States of Washington and Oregon. A table showing estimate of crops, 1887 to 1894, inclusive, put in evidence, contains a statement of the *grain crop* of Columbia county (Dayton is in this county), but this furnishes no

idea of the wheat yield. The same table gives the wheat yield in bushels in Walla Walla county for those years, *viz.*: 1887, 1,905,640; 1888, 1,226,240; 1889, 2,466,360; 1890, 1,717,900; 1891, 2,939,500; 1892, 2,541,360; 1893, 3,738,150; 1894, 3,890,170. This shows a large increase in the wheat crop of that county, which has been steady since 1891. It also appears that while the Oregon Railway & Navigation road carried the great bulk of Walla Walla county wheat in 1887 it transported in 1891-2 less than one tenth of the 1891 crop of Walla Walla county, and about one fourth in 1892-3 of the crop of that county for 1892; in 1893-4 it handled of the crop of 1893, 1,008,930 bushels of the 3,738,150 bushels of Walla Walla wheat raised. During a portion of each grain season the road is liable to have blockades of loaded grain cars at Portland or Albina, near Portland.

5. The testimony of a number of witnesses engaged in wheat production in these counties, as to the cost of raising wheat per acre and delivering the same in sacks at the railroad for transportation, furnishes estimates of from 30 to 38 cents per bushel, not including interest or taxes. Items covered by the lower estimates are plowing, harrowing, cultivating, seed, drilling, harvesting, threshing, vitrioling, sacks, repairing fences, hauling, and warehousing, and a yield of 20 bushels per acre. The item of warehousing is understood to include cost of loading on the cars.

6. "Valley wheat" is grown in the Willamette valley, and averages in price 5 to 7½ cents per bushel higher than "eastern wheat" grown in eastern Washington and eastern Oregon. The "valley wheat" crop is small as compared with the total crop of "eastern wheat," and it is not shipped in any amount over the Oregon Railway & Navigation roads. The number of bushels of wheat received at Portland in 1893 was 7,627,555, of which 1,304,758 bushels were "valley wheat." The price of wheat in the Portland market, sacked and delivered on the wharf, has greatly declined in recent years. In 1887 the average monthly price per cental was \$1.37½, or about 82 cents per bushel. The lowest price that year was in September, \$1.17½ per cental, or 70½ cents per bushel. In 1893 the average monthly price of wheat so sacked and delivered at Portland was: "Valley" \$1.0448 per cental, or about 62.7 cents per bushel; "eastern" 97.12



cents per cental, or about 58.27 cents per bushel. The lowest price in that year was for December, when "valley wheat" sold for  $87\frac{1}{2}$  cents per cental, or  $52\frac{1}{2}$  cents per bushel, and "eastern wheat" brought  $78\frac{1}{2}$  cents per cental, or  $46\frac{1}{2}$  cents per bushel. The carload of wheat shipped by complainant Evans in June, 1894, was sold August 23d to a Portland mill at 43 cents per bushel. The mill weight was considerably less than the weight as billed. The proceeds, after paying  $1\frac{1}{2}$  per cent commission, were \$135.59. The freight, amounting to \$47.35, had been prepaid by the shipper, leaving a remainder of \$88.14 applicable to the cost of production and other expenses prior to transportation of not less than 320 bushels of wheat. The carload shipped by complainant May was sold August 22, 1894, for about 36 cents per bushel,  $1\frac{1}{2}$  per cent commission was charged, and the net proceeds, deducting the freight charges, were \$70.94. The shipment consisted of about  $334\frac{1}{2}$  bushels. The variation in the price obtained at Portland on August 22 and 23 is probably accounted for in some degree by the fact that there was a difference in the grade of wheat contained in the two shipments. The price of Walla Walla wheat in Portland on January 1, 1895, was 70 cents per hundred, or about 42 cents per bushel. The "valley wheat" brought  $77\frac{1}{2}$  cents per hundred, or about 48 cents per bushel. The average farm prices of wheat per bushel in the State of Washington on December 1 of the years 1890 to 1894, inclusive, as shown in the Year Book of the Department of Agriculture for 1894 were as follows: 1890—76 cents; 1891—75 cents; 1892—58 cents; 1893—48 cents; 1894—39 cents.

The price of wheat at Pacific Coast points and in the wheat growing sections of Washington and Oregon is fixed with reference to the prevailing price in the Liverpool market.

7. Wheat shipped to Portland from this region is mostly in sacks. The loading and unloading appears to be done at the expense of the shipper. A car will carry, so it is testified, about as much grain in sacks as it will bulk grain, and inferior cars, sometimes flat, coal, or stock cars, may be used for carrying sacked grain. The road would derive little or no advantage from the shipment of wheat in bulk. Nearly  $48\frac{1}{2}$  per cent of the Oregon Railway & Navigation Rail Line tonnage in 1894-95 consisted of grain,  $19\frac{1}{2}$  per cent was lumber, and commodities

embraced in the various classes of freight made up the remainder. Besides wheat, barley, oats, and perhaps other cereals, enter into the grain tonnage of the defendant road.

8. During the wheat-shipping season a considerable proportion of the cars required for the transportation of that commodity to Portland must be hauled empty from Portland to the wheat shipping points. The empty car movement over the defendant system throughout the year was, as shown by the Receiver's Annual Report for the year ending June 30, 1895, 70.88 per cent east bound and 29.12 west bound. The total empty-car mileage of the road for that year was, however, only 29.37 per cent of the total mileage of both loaded and empty cars. Such percentage on the Washington & Columbia River R. R., a strong competitor of the Oregon Railway & Navigation Co.'s railroads for the carriage of grain, was 40.47 per cent, and such percentage for the Northern Pacific west of Idaho was 26.62 per cent.

9. The Annual Report of Receiver McNeill to this Commission, covering the operation of the rail lines of the Oregon Railway & Navigation Company, and, to some extent, the operation of the water lines of that company, for the year ending June 30, 1895, shows as follows:—Mileage, 1,059.35 miles. Gross Earnings, \$4,352,211.67. Freight Earnings, \$3,435,489.54. Operating Expenses, \$3,071,751.76. Net Earnings, \$1,280,459.91. The item of operating expenses, \$3,071,751.76 includes the following:—Maintenance of Way and Structures, \$921,476.93. Maintenance of Equipment, \$444,451.59. Conducting Transportation, \$1,595,893.85. General Expenses, \$109,929.39. The cost of "Conducting Transportation" includes \$240,200.36 paid for track and terminal facilities at Portland and Spokane, and \$101,793.38 for "Outside Agencies." Interest at 6 per cent was paid during the year on the \$4,938,000 of first-mortgage bonds outstanding to the amount of \$290,490, leaving a balance of accrued interest on such bonds, but "not yet payable," of \$5,790. The cash and current assets (not including materials and supplies on hand) were, on June 30, 1895, \$1,192,335.45, of which \$838,965.91 was "cash." The operation of the Ocean and River Steamer Lines resulted in a deficit of \$55,380.03, and this caused the report of "Miscellaneous Income," less expenses, to show a loss of \$34,177.98. The Income Account shows also the payment of

taxes amounting to \$148,369.60. The amount carried to Surplus Account on June 30, 1895, was \$803,891.15. No receiver's certificates were issued during the year, and payments made or accounts audited appear to include \$200,000 expense incurred in repairing the damage to the roadbed from a disastrous flood in the Columbia river in June, 1894, and which caused practical suspension of operation of a portion of the road between Walla Walla and Portland for a period of one month or over. The item of \$485,846.43, expended during the year for repair of roadway, did not include renewals of rails and ties. About 2,640 tons of new steel rails and 447,616 new ties were laid during the year. These expenses, as called for in the report form, were reported as "Maintenance of Way and Structures," under the general head of "Operating Expenses." The report also shows that the company owns 2,852 freight cars and that the car mileage balance for the year in the account with other roads was in favor of the receiver to the amount of \$17,576.69.

The number of tons of freight carried earning revenue was 855,897, and 414,628 tons (48.44 per cent of the total) consisted of grain. The average distance haul of one ton was 227.36 miles. The number of tons carried one mile was 194,594,407. The average amount received for each ton of freight was about \$4.014. The average rate per ton per mile was 1.765 cents. The percentage of operating expenses to earnings for the year ending June 30, 1895, was 70.58 per cent.

The report of operation of the Oregon Railway & Navigation Company's properties for the year ending June 30, 1894, filed by Clark and others as receivers of the Oregon Short Line & Utah Northern Railway Company, furnishes the following figures for that year:—Mileage, 1,059.35 miles. Gross Earnings, \$3,280,530.26. Freight Earnings, \$2,269,422.66. Operating Expenses, \$2,775,645.88. Net Earnings, \$504,884.38. Tons of Freight Carried, 638,750. Tons Carried one mile, 146,015,528. Average Distance Haul of one ton, 228.60 miles. Average Rate per ton per mile, 1.554 cents. Average Amount Received for each ton of freight, \$3.553. Grain Carried, 234,208 tons—36.67 per cent of total tons carried. The Percentage of Operating Expenses to Earnings was 84.61 per cent. The expenditures included in "Operating Expenses" and applied on "Maintenance of Way

and Structures" were about \$175,000 less than was expended by Receiver McNeill in the following year.

The company's report to the stockholders in 1887 shows the following figures for the rail lines for the year ending June 30, 1887:—

1887: Average mileage operated, 740 miles. Gross Earnings, \$3,981,692.37. Freight Earnings, \$3,059,588.31. Operating Expenses, \$1,942,818.90. Net Earnings, \$2,038,873.47. Percentage of Operating Expenses to Earnings—R. R. Division, 48.7 per cent; Columbia & Palouse Division, 50.2 per cent. Total Tons Carried, both Divisions, 660,102. Freight Carried one mile, 138,361,236 tons. Average Distance Haul of one ton—R. R. Division, 219.4. Earnings per ton, \$4.63. Rate per ton per mile, 2.21 cents.

For the years ending June 30, 1888, to June 30, 1895, inclusive, the gross earnings, operating expenses, income from operation, and per cent of expenses to operating income were, as shown by reports on file, as follows:—

Years.	Gross Earnings.	Operating Expenses.	Income from Operation.	Per Cent of Expenses to Operating Income.
1888	\$5,888,226	\$3,302,218	\$2,586,008	56.06
1889	6,253,871	4,155,945	2,097,926	66.45
1890	4,487,847	3,263,994	1,173,853	73.56
1891	5,605,960	3,939,943	1,666,017	70.28
1892	5,088,068	3,593,890	1,494,648	70.63
1893	4,759,722	3,265,117	1,494,606	68.60
1894	3,280,530	2,775,646	504,884	84.61
1895	4,352,212	3,071,752	1,280,460	70.58

The percentage of operating expenses to operating income for the year ending June 30, 1894, for all the railways in the United States was 68.14 per cent, and for Group X of Railways (including the O. R. & N. system) it was 67.93 per cent.

Following is a statement of the average rates per ton per mile received for freight transported over the Oregon Railway & Navigation Company's rail lines for the years ending June 30, 1888, to 1895, inclusive; the average rate per ton per mile received on freight throughout the country for the years ending June 30, 1888, to 1894, inclusive, and the average rate per ton per mile in

Group X of Railways, which includes the lines of the Oregon Railway & Navigation system, for the years ending June 30, 1890, to 1894, inclusive:

Years.	For O. R. & N. Railways.	For United States.	For Group X.
	Cents.	Cents.	Cents.
1888	1.684	1.001	
1889	1.979	.922	
1890	1.970	.941	1.651
1891	1.733	.895	1.631
1892	1.893	.898	1.646
1893	1.713	.878	1.507
1894	1.554	.860	1.343
1895	1.765		

10. The properties of the Oregon Railway & Navigation Company were leased to the Oregon Short Line Railway Company on April 25, 1887, the lease to take effect as of January 1, 1887. Under the lease the lessor company was to receive 6 per cent on its capital stock and interest on its funded debt. This lessee company afterwards became merged into the Oregon Short Line & Utah Northern Ry. Co., and its owned and leased properties were operated as part of the Union Pacific system, and by that company or its receivers, Clark and others, acting as such or under separate appointments for the Oregon Short Line & Utah Northern and Oregon Railway & Navigation Co. up to or about July 3, 1894, when Receiver McNeill came into possession of the Oregon Railway & Navigation Co.'s rail and water lines. The Report of the Union Pacific System to Stockholders for the year ending Dec. 31, 1893, shows for the years 1889 to 1893, inclusive, large yearly deficiencies from the operations of the Oregon Railway & Navigation rail lines, after application of total net income, but except for 1890 and 1893 the yearly total net income was in excess of the stated interest on bonded indebtedness.

A traffic agreement entered into between the Union Pacific Ry. Co. and the Southern Pacific Company in April, 1890, required the Union Pacific to close its California routes "*via Fort Worth and Trinidad, via Fort Worth and Ogden, and via its steamship line via Portland,*" and to do all its business to and from California by way of its Missouri crossings and Ogden; also that rates

between points on the Southern Pacific and points on the Union Pacific system east of Portland and west of Nampa, Idaho, should be the same as published tariff rates of the Union Pacific from San Francisco in connection with its steamship line (O. R. & N. Steamers), the Union Pacific to have for its share of the through rate its local rate east of Portland, but no more than 50 per cent of the through rate, except where branch line points were charged arbitrary rates above the through rate to the point of junction.

Since the operation of the properties by Receiver McNeill expenses have been largely decreased in nearly all departments, and the properties have been improved. Each year some damage to the road is caused by high water in the Columbia river; such damage was exceptionally great in June, 1894.

11. On June 30, 1887, the Oregon Railway & Navigation Company's indebtedness, as represented by capital stock issued and bonds outstanding, was: Capital Stock, \$24,000,000, and Bonds, \$13,992,000. Total, \$37,992,000. The Oregon Railway & Navigation Company was able, from earnings from operation for part of the year ending June 30, 1887, and from rental moneys received from its lessee, to pay dividends equal to  $6\frac{1}{2}$  per cent on its capital stock for that year. The rail mileage on June 30, 1887, was 749 miles. On June 30, 1895, the indebtedness of the Oregon Railway & Navigation Company, as represented by capital stock issued and bonds outstanding, was: Capital Stock, \$24,000,000, and Bonds, \$22,665,000. Total, \$46,665,000. There was also a statement of current liabilities to the amount of \$3,283,581.02, which includes unpaid dividends to stockholders, audited vouchers and accounts, and matured interest unpaid. These total liabilities were apportioned in a financial report filed upon 642.71 miles of road, equal to \$77,716 per mile, but with the statement that a portion of the debt was applicable to the water lines. The remaining mileage in the total of 1,059.35 miles appears to be held through ownership of stock of subsidiary roads or under lease.

The water lines made \$290,765.10 net earnings in the year ending June 30, 1887. On June 30, 1889, each of the water line divisions showed a deficit for that year amounting in the aggregate to \$102,815.27. A loss of \$393,580.37 in two years. The Union Pacific Railway Report to the Stockholders on Dec. 31,

1893, shows that Operating Expenses of the water lines (including taxes) exceeded earnings in 1892 by \$113,534.98, and in 1893 by \$61,481.29. The water lines are still managed at a loss. The deficiency during the year ending June 30, 1895, amounted as heretofore stated to \$55,380.03. 1,241.42 miles were stated in the Oregon Railway & Navigation Report for June 30, 1889, as the mileage of the water lines. What proportion of the total indebtedness should be assigned to the water lines cannot be estimated with any accuracy.

Receiver McNeill's net income from operation on June 30, 1895, was \$1,280,459.91; there was also an income of \$8,022.33 from bonds owned, and if there had been no deficiency from operation of the water lines, there would have been a net "Miscellaneous Income" of \$21,202.05. These figures added give a result of \$1,309,684.79. The yearly interest on the outstanding bonded debt of \$22,665,000 amounts to \$1,183,390 or \$126,294.79 less than the above estimated total net income.

The testimony as to what would be the cost of duplicating the rail lines and equipment of the Oregon Railway & Navigation Co. furnishes estimates of from \$22,000 to \$35,000 per mile. The capitalization, funded and floating debt reported on June 30, 1895, at \$49,948,581, is equal, on the basis of the whole 1,059 miles operated, to \$47,165 per mile. Estimating the cost of duplication at \$25,000 per mile, the amount carried to surplus from earnings in the year ending June 30, 1895, added to interest paid for that year, would be sufficient to pay over 4 per cent on such cost.

12. The Oregon Railway & Navigation system is in competition for the carriage of grain to Portland, Tacoma, and other Puget Sound points, with the Northern Pacific and its affiliated line, the Washington & Columbia River R. R. The Northern Pacific R. R. was extended in 1887 from Pasco Junction to Tacoma and there connection was made with the line operated by that company for some years previous between Tacoma and Portland. A long tunnel through the mountains was completed in 1888, and the switchback over the mountains, which had been in use, was discontinued. Prior to such extension, Northern Pacific traffic destined to Portland and Puget Sound was handled by the Oregon Railway & Navigation Co. The Washington & Columbia River R. R., which delivers its grain to the Northern Pacific,

connects with that road at Hunt's Junction, near Wallula. The Washington & Columbia River road reaches Walla Walla and Dayton and also has a line southerly from Hunt's Junction to Pendleton and Athena, which are also served by the Oregon Railway & Navigation Co. The Oregon Railway & Navigation road may also encounter some competition in the carriage of grain from territory served by the Great Northern, which passes through Spokane. There are a great many competitive points in Umatilla, Walla Walla, and Columbia counties. Walla Walla county is practically all competitive. The only section of Columbia county where the competition is as severe as it is in Walla Walla county is in the neighborhood of Dayton.

13. Much, if not most, of the wheat hauled to station ware houses is sold by the farmer before shipment, and the competing roads have paid commissions or other form of compensation to buyers or other parties in the wheat region for securing grain shipments over their lines. In some instances testified to, the farmers were paid by a buyer soliciting for defendant's competitor from one to ten cents a bushel in excess of the market price. The Pacific Elevator Co. (F. H. Peavey & Co., of Portland) has receiving elevators or warehouses along the lines of the Oregon Railway & Navigation Co., and under a long-standing contract has been paid large sums for obtaining and forwarding grain shipments over those lines, equalizing ocean charters as between Portland and Tacoma, and possibly other services. Vouchers in evidence show that these payments by Receiver McNeill to Peavey & Co., as "approximate amount due on account of shipments of grain from points on the Oregon Railway & Navigation system," amounted, from July 4, 1894, to April 30, 1895, to \$86,357.77, and that such payments were based on rates of commission of  $57\frac{1}{2}$  and  $58\frac{1}{2}$  cents per ton, and an aggregate of 149,714.22 tons, equal to 4,990,474 bushels. The total amount of wheat carried over the Oregon Railway & Navigation lines from July 4, 1894, to February 28, 1895, was 8,370,043 bushels. Such rates of  $57\frac{1}{2}$  and  $58\frac{1}{2}$  cents per ton equal  $2\frac{1}{2}$  and  $2\frac{1}{2}$  cents per hundred pounds, respectively. Other vouchers in evidence show payments for drayage of grain and flour at shipping points from warehouses on the Washington & Columbia River road to Oregon Railway & Navigation tracks. Still another voucher filed and not explained



is for payment to a Portland commission firm of overcharge on shipments of wheat from Athena, Or., to Portland, Or., in September, 1894. These points are both in Oregon. The overcharge was claimed on a rate per ton which was 41.4 cents less than the rate per ton afforded by a published rate on file with the Commission and apparently in force when the shipments were made. The rates in force from competitive shipping points are and have been made substantially the same by either road, and grain rates to Tacoma and Portland are generally the same. The export rates through Portland and Puget Sound points to Europe are practically the same. The Northern Pacific Railroad is also in the hands of receivers, but it does not appear that this resulted from lack of tonnage, or earnings on traffic, to and from the grain producing section of Washington.

14. The grain rates to Portland on this system from Umatilla and more distant stations appear to be divided into the following group rates, namely,  $19\frac{1}{4}$ ,  $21\frac{1}{4}$ ,  $22\frac{1}{4}$ ,  $23\frac{1}{4}$ , 25, and  $28\frac{1}{4}$  cents. Umatilla is 186 miles east of Portland and the junction of the line to Huntington, Or., with the line to Walla Walla and Spokane, Wash., and branch line points. From Walla Walla the road running from Spokane also extends south to Pendleton on the Oregon line.

The  $19\frac{1}{4}$  cent rate to Portland applies to a group of stations 27 miles in length, Umatilla to Wallula, inclusive. The  $21\frac{1}{4}$  cent rate is in force over different portions of the system: On the Oregon line it extends from just east of Umatilla to Meacham, 72 miles. Another group begins at Divide, just east of Wallula, and passing through Walla Walla and La Crosse on the Spokane route ends with Connell, the terminus of a branch line from La Crosse; the extreme distance within this group is about 155 miles. The short distance branch from Bolles Junction to Dayton is given this rate, and also places on the direct north line, Pendleton to Walla Walla. Stations on the short branch line from Starbuck to Pomeroy had the  $23\frac{1}{4}$  cent rate until August 20, 1894, when the rate was reduced to  $22\frac{1}{4}$  cents. The  $23\frac{1}{4}$  cent rate applies between Sutton (just north of La Crosse) to Spokane, and to Moscow, a branch line point; the greatest distance covered by this group is 121 miles. This rate is also in force from Lewiston, on the Snake river, to Portland, a distance of 379 miles, the transportation

being by boat to Riparia, a  $21\frac{1}{2}$  cent point, and from there by rail to Portland. On the Oregon line the  $23\frac{3}{4}$  cent rate is in effect from Nibley's Spur to Baker City, a group distance of about 74 miles. From just east of Baker City to Huntington, 47 miles, the Portland rate is 25 cents. On the branch between Tekoa and Wallace, Burke and Mullan, in Idaho, the rate from east of Tekoa to Portland is  $28\frac{3}{4}$  cents. Mullan is 476 miles from Portland.

The following table shows various stations, distances to Portland, and wheat rates in force to Portland on January 1, 1888, or dates nearest thereto for which rates are supplied, and at the present time:

STATIONS.	DISTANCE. Miles.	RATES ON JANUARY 1, 1888.	PRESSENT RATES.
		Cents.	Cents.
Umatilla.....	186	22	19 $\frac{1}{2}$
Pendleton.....	231	23 $\frac{1}{2}$	21 $\frac{1}{2}$
Walla Walla.....	245	23 $\frac{1}{2}$	21 $\frac{1}{2}$
Bolles Junction.....	270	26 $\frac{1}{2}$	21 $\frac{1}{2}$
Dayton.....	283	26 $\frac{1}{2}$	21 $\frac{1}{2}$
Riparia.....	300	30	21 $\frac{1}{2}$
Pomeroy.....	323	30	22 $\frac{1}{2}$
Oct. 10, '88.			
La Crosse.....	326	32 $\frac{1}{2}$	21 $\frac{1}{2}$
Jan. 1, '88.			
Colfax.....	361	32 $\frac{1}{2}$	21 $\frac{1}{2}$
March 1, '89.			
Connell.....	379	32 $\frac{1}{2}$	21 $\frac{1}{2}$
Jan. 1, '88.			
Pullman.....	380	32 $\frac{1}{2}$	23 $\frac{1}{2}$
Moscow.....	389	35	23 $\frac{1}{2}$
Jan. 1, '90.			
Mullan.....	476	45	26 $\frac{1}{2}$

The wheat rate of \$4.25 per ton, or  $21\frac{1}{2}$  cents per hundred, from Walla Walla to Portland, is equal to about 1.734 cents per ton per mile, and the same rate in force from Dayton to Portland yields about 1.501 cents per ton per mile. The average rate per ton per mile received on all freight during the year ending June 30, 1895, was 1.765 cents. The present rate on wheat from Walla Walla and Dayton of \$4.25 per ton exceeds the average rate per ton of \$4.01 received on all freight on these lines in 1894-5. Since October 10, 1888, the class rates between Walla Walla and Portland have been considerably decreased. The reduction on class 1 has been  $12\frac{1}{2}$  cents to \$1.07 $\frac{1}{2}$ ; and on class E, the lowest class,  $11\frac{1}{2}$  cents to 20 cents per hundred. The present rates on these classes are class 1, \$1.14; class E, 20 cents. Similar class-

rate reductions have taken place as between Dayton and Portland, but these rates are considerably higher than the class rates between Walla Walla and Portland.

#### CONCLUSIONS.

Both sides in these cases have referred to, and to some extent relied upon, the rates of carriers in other sections of the country, without showing that substantial similarity in transportation conditions which is necessary to make such rates proper standards of comparison in a case of alleged unjust and unreasonable charges.

The financial reports and exhibits (including earnings and expenses) for the Oregon Railway & Navigation lines for a number of years prior to the appointment of Receiver McNeill have been considered by the Commission in other cases involving wheat rates on this road to Portland, and it was held that in view of the reported increase in gross earnings of the whole Union Pacific system (O. R. & N. road included), and the well maintained annual earnings per mile of road, the large increase in the interchange of business between this road and the other roads of that system, and the great "value" of the Oregon Railway & Navigation Company to the Union Pacific Railway Company, it may fairly be assumed that the apportionment of earnings as made by the Union Pacific is largely a question of bookkeeping. *Morrell v. Union Pac. R. Co.* 4 Inters. Com. Rep. 469, 6 I. C. C. Rep. 121; *Newland v. Northern Pac. R. Co.* 4 Inters. Com. Rep. 474, 6 I. C. C. Rep. 131. Some figures pertaining to the operation during the period referred to are, however, set forth in the findings for the purpose of comparison with reported earnings and expenses since the road passed into the hands of receivers, and thus defining the present situation.

For a considerable period prior to the appointment of the present receiver of the Oregon Railway & Navigation Company, and since that time, railroad as well as general business has been greatly depressed, and, though improvement in railroad earnings has been shown, recovery from the depression is by no means complete. It is not surprising, therefore, that while the gross earnings of the Oregon Railway & Navigation lines for the year ending June 30, 1895, show a great increase over those of the preceding year, they were still considerably short of the gross income which these

properties may reasonably be expected to afford. The management of the road by Receiver McNeill for the year 1894-5 also shows improvement of the property and economies in the operating department. The population of Washington has been constantly and rapidly increasing, the wheat acreage is not decreasing, and the fair average yield per acre annually in normal crop years is being maintained, and these facts constitute a guaranty of increasing volume of business and additional earnings to the railroads of the State. The belief seems justified that under capable management and proper financial administration the Oregon Railway & Navigation lines will soon again become profitable transportation properties.

The market price of wheat at Portland and other Pacific Coast points has been reduced fully or nearly one half since 1887, while the wheat rate from Walla Walla to Portland remained the same as that which was put in force in the latter part of that year until shortly after these cases were instituted, when a reduction of  $2\frac{1}{2}$  cents per hundred pounds was conceded by the receiver and a reduction of  $2\frac{1}{2}$  cents was accorded to Dayton. There have been extensive reductions on the other classes of freights from all points on the lines since 1887, and the reductions in wheat rates from points much more remote than Walla Walla or Dayton from Portland have been very considerable. The cost of raising wheat, sacking, warehousing, and loading in cars ready for transportation, added to the transportation charge to Portland, leaves far less margin to the producer between such cost and the selling price than in 1887.

The road from Walla Walla to Portland has easy grades, and is much less expensive to operate than other portions of the defendant system. This part of the road is subject, however, to sand drifts, earth slides, washouts by floods in the Columbia river, and alkali in the soil increases the natural deterioration of ties and wooden substructures, and these are matters to be considered in determining the reasonableness of the rates in question.

Walla Walla and Columbia counties, Washington, important and productive wheat-growing localities, were reached and served by the Oregon Railway & Navigation Co. in 1887, prior to the extensions which have increased the mileage from about 740 to 1,059 miles, and for which the company has assumed addition:

debt burdens. The present rail mileage and equipment could be duplicated for very much less than the amount of the company's capitalization and funded debt.

A feature of the wheat transportation to Portland is the necessity for hauling empty cars from Portland or intermediate stations to wheat shipping points, but the percentage of all the empty-car mileage to the total car mileage of the roads is less than 30 per cent. Moreover, wheat and other grains constitute about one half of the total tonnage, and wheat is usually shipped in carload quantities.

The average rate per ton per mile received in 1894-5 by this road on all its freight traffic was more than double the average rate per ton per mile received for all freight on all railroads throughout the country for the year ending June 30, 1895. The average rate per ton per mile on the Oregon Railway & Navigation lines in 1894-5 was also considerably in excess of the average rate per ton per mile received during that year on all freight by railroads in Group X of Railways of the United States, which includes the Oregon Railway & Navigation roads. The rate per ton per mile produced by the wheat rate now in force from Walla Walla to Portland is nearly equal to the average rate per ton per mile received on all freight traffic on the Oregon Railway & Navigation rail system in 1894-5. The rate of \$4.25 per ton now in force from Walla Walla and Dayton to Portland is in excess of the average rate per ton received on all traffic during 1894-5, which was \$4.014.

Wheat is classed among the lower grades of freight, the wheat rates generally over these lines being about one fourth or one fifth the rates charged on first-class traffic. The group system of rate making, which is largely applied to grain, flour, and mill stuffs on roads in Washington and Oregon, and which includes considerable distances in some groups, ignores the more favorable location of the growers at stations in the respective groups which are nearer to the Portland market. The legality of this grouping system is not, however, directly drawn in question here, and if group rates on wheat are a necessity of the situation in that section of the country, no good reason appears why Walla Walla and Dayton, strongly competitive stations, should not be placed in the adjoining Umatilla or 19½ cent group, which now embraces

a short distance, rather than in the long distance group to which the 21½ cent rate is now applied.

While strong competition exists between this line and the Northern Pacific system (including the Washington & Columbia River road) for shipments of grain to Portland or points on Puget Sound, such competition has not had the effect of decreasing the wheat rate from Walla Walla. The various methods of attracting traffic to one or the other roads include the payment of commissions for maintaining elevators, equalizing ocean charter rates as between Portland and Tacoma, and inducing grain shipments over the road, the payment of cartage expenses for hauling grain from warehouses on the tracks of one competing road to the tracks of the other, and perhaps other expenses which enter into or are incurred through bargains between producers and buyers acting also as soliciting agents for the road, and which have connected the business of public transportation with the private trades of producer and buyer. It is possible that the means adopted may not constitute rebates or devices to accomplish unjust discrimination under the Act to Regulate Commerce, though they have much the same effect upon the railroad earnings; but it is evident that the system gives shrewd producers or shippers an opportunity to substantially cut the railroad rate through sales of their grain at an increased price. The location and grades of the Oregon Railway & Navigation rail lines as compared with those of its chief competitor, and the fact that the Oregon Railway & Navigation lines reach Portland over a much shorter distance than is covered by the Northern Pacific route, demonstrate that the lines of this defendant are favorably situated with reference to the competition between itself and the Northern Pacific route for the carriage of grain produced in eastern Washington and Oregon.

The following principles laid down in the cases of *Newland v. Northern Pac. R. Co.* 4 Inters. Com. Rep. 474, 6 I. C. C. Rep. 131, and *Morrell v. Union Pac. R. Co.* 4 Inters. Com. Rep. 469, 6 I. C. C. Rep. 121, which related to the reasonableness of wheat rates to Portland, and in each of which the Oregon Railway & Navigation Company was a defendant, are applicable in these cases:

“The practice of making one rate on the same product over a

large district is only justifiable under special and exceptional circumstances, and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial. \* \* \* That railroad investments may be as secure as other property, the reasonable rates should be liberal until earnings are sufficiently large for a fair return on actual expenditure. \* \* \* Where the market price yields but a scant return for the labor and expense of production, the cost of transportation needs to be as moderate as may be consistent with justice to the carrier." *Newland v. Northern Pac. R. Co. supra*. Competition or a division of business as the result of building a second road where previously but one existed should justify lower rather than higher charges. *Morrell v. Union Pac. R. Co. supra*.

The wheat rates in force from Walla Walla and Dayton to Portland when these cases were brought were unjust and unreasonable. Rates based on one cent per ton per mile, namely \$2.45 per ton from Walla Walla, and \$2.83 per ton from Dayton, as contended for by complainants, would be unjust to the road under present conditions. On the other hand, upon all the facts and considerations set forth in this report, we think that the reduced rate of 21½ cents per hundred, or \$4.25 a ton put into effect from both points in August, 1894, is still somewhat too high for the service rendered. In our opinion, the rate from Walla Walla to Portland on wheat in carloads should not exceed 19½ cents per hundred pounds, or \$3.90 per ton, and the rate for the somewhat longer distance from Dayton to Portland on wheat in carloads should not exceed 20 cents per hundred pounds, or \$4.00 per ton.

The rate complained of as in force from Walla Walla, and to which the rate from Dayton was adjusted, was a rate put in force in compliance with an order issued by the Commission in 1887, and the claim of the complainant in each case for money reparation is denied.

Suitable order in accordance with the above conclusions will be entered in each case.

ALANSON S. PAGE, CADWELL B. BENSON AND  
CHARLES TREMAIN V. THE DELAWARE, LACK-  
AWANNA & WESTERN RAILROAD COMPANY,  
THE NEW YORK CENTRAL & HUDSON RIVER  
RAILROAD COMPANY, THE MICHIGAN CEN-  
TRAL RAILROAD COMPANY.

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Decided March 4, 1896.

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1. Under the "Act to Regulate Commerce" the Commission has continuing jurisdiction over the rates and practices of carriers subject to its provisions, and is not precluded from rehearing a particular case, and amending or modifying its original order therein, by the refusal of a Circuit Court of the United States to enforce such order against the carriers affected thereby,—especially when the reasons assigned for such refusal do not relate to the principal question in controversy and are consistent with an approval of the amended or modified order.
2. The Commission is authorized and required in appropriate proceedings to determine whether rates or practices of carriers complained of are unlawful, and, if so, to what extent; and to require such carriers by suitable order to cease and desist, not only from doing what is ascertained to be unlawful, but from omitting to do what is found to be lawful.
3. In proceedings before the Commission complaining parties are not bound to include as defendants all carriers maintaining the rates or indulging in the practices complained of, but may proceed against the particular carrier or carriers whose lines are used or required by the complainants; nor can such carriers excuse disobedience of a lawful order of the Commission because other carriers, members of an association with them, were not made parties to the proceeding and have failed or refused to take action in conformity with such order.
4. The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," and "unjust discrimination," as used in the statute, imply comparison, and rates to be lawful must bear just relation to each other as well as be reasonable *per se*.
5. The elements of bulk, weight, value, and character of commodities are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification.



6. When carriers have uniformly placed in the same class all grades of a particular commodity, for example, window shades, regardless of the difference in value between different grades or the size of cases used for shipment, such carriers will not incur greater risks than they have thus voluntarily assumed, if the same practice is continued under a decision and order requiring a lower classification and rating for the great bulk of shipments of that commodity which are actually transported.
7. An order having been issued in this case on March 23, 1894, requiring the defendants to cease and desist from charging more than third-class rates for the transportation of window shades, and the circuit court of the United States having declined to enforce such order on the sole ground that it applied to shades having very high value as well as to the cheaper varieties,—*Held*, upon rehearing before the Commission, that said order of March 23, 1894, should be vacated, and a new order entered containing the same general requirement, but with a proviso permitting the defendants to restrict their transportation of window shades at third-class rates to those limited to a specified maximum valuation at the time of shipment, and to prevent excessive undervaluation for transportation purposes of the much more expensive grades by such regulations as they may be advised are just and lawful.

*John D. Kernan* for complainants.

*Frank Loomis* for defendants.

#### REPORT AND OPINION ON REHEARING.

##### BY THE COMMISSION:

This case, which involves the classification of window shades by the defendant carriers, was decided by the Commission in a report and opinion issued on March 23, 1894, and an order bearing that date was entered and served directing the defendants to cease and desist from charging more for the transportation of "window shades, plain or decorated, mounted or unmounted, when packed in boxes," than they contemporaneously charge for like service rendered in the transportation of commodities enumerated as third-class articles in the freight classification in force over their roads.

On April 30, 1894, one of the defendants, the New York Central & Hudson River Railroad Company, attempted to comply with our decision by issuing circular No. 632 to take effect May 1, 1894, whereby it established a third-class rating for the interstate transportation of window shades. The third-class rates established by this circular remained in force for one month, when another

New York Central circular—No. 1096, dated May 17, and made effective June 1—was put in force by which the third-class rating of shades was limited to west-bound shipments to Chicago, Ill., over the Michigan Central Railroad and to intermediate stations on the Michigan Central Railroad. This second circular, No. 1096, was in effect only ten days. On May 31, 1894 (one day before circular No. 1096 took effect), the New York Central issued a third circular, No. 1106, to take effect June 11, whereby its second circular, No. 1096, was revoked and direction given that window-shade shipments should be governed by the official classification; in other words, that they should take the old and higher first-class rates in force prior to the issuance of our order.

The Rome, Watertown & Ogdensburg Railroad, of which the New York Central is lessee, also established third-class rates on shades from Oswego to Chicago and intermediate points *via* Suspension Bridge and the Michigan Central Railroad; but such rates, like those on the New York Central proper, were canceled by a circular dated June 1, to take effect June 11, 1894.

The Delaware, Lackawanna & Western Railroad Company also directed compliance with the provisions of said order, but this defendant subsequently modified this direction by limiting such compliance to points on the Delaware, Lackawanna & Western, New York Central & Hudson River, and Michigan Central Railroads, and afterwards, on or about the 1st of June, 1894, canceled this limited compliance with our order, and directed that window shades should thereafter be governed by the terms of the official classification.

The defendants' intention to comply with our order is further indicated by the following letter from the traffic manager of the New York Central & Hudson River Railroad to our Auditor:

"New York, N. Y., June 1, 1894.

"C. C. McCain, Esq.,

"Auditor, Interstate Commerce Commission.

"DEAR SIR:

"In explanation of circular No. 1106, filed this date, allow me to say that, on receipt of the Commission's order in the 'window shade' case, we issued instructions to our agents to comply therewith, as far as traffic over the defendant roads was concerned; and we laid the matter before the classification committee for its action.

"We have, however, been advised that the classification committee does not feel justified in making such a reduction at this time, and has decided that the carriers should avail themselves of their right to have the question passed upon by the courts.

"Under these circumstances, and as it is represented that our compliance with the order of the Honorable Commission would injuriously affect important interests of other companies, whose traffic is governed by the official classification, we have felt it only just for us to cancel our circular, above referred to, and return to the official classification, and await the final determination of the question.

"Yours truly,

"NATHAN GUILFORD,

"G. T. M."

Compliance with our order in this case appears, therefore, to have been revoked by the defendants upon the representations and request of carriers against whom no order had been issued, and not upon any manifested unwillingness to obey the order or upon any belief then expressed or indicated by the defendants that its requirements were unlawful.

On June 21, 1894, a petition was filed by the Commission, in the circuit court of the United States for the northern district of New York, under section 16 of the Act to Regulate Commerce, as amended March 2, 1889, against the above-named defendants for enforcement of our said order of March 23, 1894. The case was duly argued and submitted, and the decision of the circuit court, filed on October 29, 1894, reads as follows:

"The order of the Interstate Commerce Commission, which the court is now asked to enforce, prohibits the railway carriers, the parties respondent, from charging any greater compensation for the transportation of window shades of any description, whether the cheap article, worth \$3 per dozen, or the hand-decorated article, worth \$10 per pair, than the third-class rate, the rate charged for the transportation of the materials used in making window shades. Such an order, in my judgment, ignores the element of the value of the service in fixing the reasonable compensation of the carrier, and denies him any remuneration for additional risk. I cannot regard it as justifiable upon principle, and must refuse to enforce it.

"The petition is dismissed."

A formal order was thereupon entered dismissing the petition, "but without prejudice to any right the said Interstate Com-

merce Commission may have to proceed further and to amend its said order or to further proceed to enforce the said order as so amended." An application to the court for reargument was denied. On or about December 29, 1894, counsel for the complainants served upon the defendants, under rule 15 of our rules of practice, a copy of a petition to the Commission for rehearing, which contains the following:

"That upon such rehearing the complainants desire that the proceedings before the said United States circuit court may be considered and also to present evidence to meet any evidence offered to sustain the allegations contained in the affidavits presented by the defendants to the United States circuit court upon the hearing before the said court, and the petitioners will respectfully ask that the said order of the Commission herein be modified so as to exclude therefrom hand-made and hand-decorated window shades, or that the Commission shall make a new order and decision based upon the evidence heretofore or hereafter offered herein."

Defendants' answer to the petition for rehearing alleged that complainants had no right or capacity to apply for, and this Commission had no right or capacity to order, a rehearing in this case. This plea was overruled by the issuance on January 11, 1895, after presentation of arguments for and against the petition, of an order granting the rehearing; and such hearing was held in New York city on February 18 and 19, 1895. At the rehearing this objection to jurisdiction was again raised by counsel for the defense, and it was claimed in support thereof that the petition to the court for enforcement of the order of the Commission and the subsequent trial in court and decision dismissing the petition precluded the complainants from applying for, and the Commission from granting, any further hearing in this proceeding; that no such authority is granted to the Commission in the Act to Regulate Commerce; that this lack of power in the Commission to grant a rehearing after institution of proceedings in court to enforce its order was recognized in a bill then pending in Congress, and containing, among other amendments, a provision for rehearing by the Commission in cases of this character; and that presumably such amendment had been suggested by the Commission. The measure referred to embraced, among other provisions, an amendment providing a procedure in the

courts to enforce orders of the Commission which, while preserving to the court all necessary functions and authority, would give due effect and value to proceedings before and by the Commission. In attempting to amend section 16 by substituting therefor a new and more satisfactory method of court procedure in cases originating before the Commission, it was necessary to specifically provide therein for all proceedings that justice might require, without regard to the presence or absence in the present statute of authorization for any particular legal step or proceeding before the Court or Commission. This amendment, with some changes, is recommended to Congress in our last annual report, and by one of its provisions the Commission is authorized to rehear cases at any time; but the fact that such amendment contains a rehearing provision which, in comparison with the object sought to be obtained by the whole amendment, is merely a detail, is no warrant for a conclusion that the present statute fails to authorize the Commission to grant a rehearing in this proceeding or in cases generally. The Commission is empowered by the statute to "execute and enforce the provisions of this act;" to investigate complaints against carriers, when there shall appear reasonable grounds for investigation, "in such manner and by such means as it shall deem proper;" to "conduct its proceedings in such manner as will best conduce to the proper despatch of business and to the ends of justice;" and "from time to time make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it." Under this ample authority of the statute the Commission has established rules of practice, and rule 15 thereof permits any party to apply to the Commission at any time for a rehearing, either upon the ground of error in the order or decision, or of subsequent changes in conditions or circumstances, or of consequences resulting from the carriers' compliance with its order. The Commission is not a court; it is a special tribunal continually engaged in an administrative and semi-judicial capacity in investigating railway rates and practices, the propriety of which may be and often is affected by changes in commercial and transportation conditions; and it is not precluded from rehearing a particular case and amending or modifying its original order therein by the refusal of a circuit court of the United States to enforce such order against

the carriers affected thereby,—especially when the reasons assigned for such refusal do not relate to the principal question in controversy and are consistent with an approval of the amended or modified order. The decree of the court in this case provides that it shall be without prejudice to any right the Commission may have to amend the order sought to be enforced. Defendants' objection to our jurisdiction to grant a rehearing in this case was properly overruled by the order granting the rehearing.

A question arose in court as to whether the Commission "has any power to make rates," and this was made the basis of some argument on behalf of the defendants at the rehearing. The Act to Regulate Commerce authorizes and directs the Commission in appropriate proceedings to determine whether rates or practices of carriers complained of are unlawful and to what extent they are unlawful, and to require the carriers by suitable order to *cease and desist*, not only from charging or doing what is ascertained to be unlawful, but *from committing to do what is found to be lawful*. *Coze Bros. & Co. v. Lehigh Valley R. Co.* 3 Inters. Com. Rep. 460, 4 I. C. C. Rep. 535; *Perry v. Florida C. & P. R. Co.* 3 Inters. Com. Rep. 740, 5 I. C. C. Rep. 97; *Murphy, Wasey & Co. v. Wabash R. Co.* 3 Inters. Com. Rep. 725, 5 I. C. C. Rep. 122.

The defendants alleged in their answers filed in court that the original proceeding before the Commission was irregular because some 128 other railroad companies using the official classification were not notified of the pendency of the proceedings and had no opportunity to uphold before this Commission the classification of shades against which complaint was made. In support of this it was asserted in the testimony that enforcement of our order against the defendants only would tend to break up the harmony in classification and rating accomplished by the railroads in eastern territory through their joint acceptance and use of the official classification, as made by representatives of such railroads, and that it would also necessarily result in the rebilling of through shipments and the charge of higher rates from junction points where the defendant railroads connect with those of carriers not parties to the case. It appears, however, that the more important roads using the classification,—about 60 in number,—and directly

represented in the classification committee, have, in fact, been represented before the Commission and in the court by the chairman of the official classification committee. However this may be, we think the proceedings in this case have been properly against the carriers named as defendants in the complaint. Complaining parties are not bound to bring or maintain cases before the Commission against railway associations or against all the carriers who, by reason of association or mutual assent, indulge in practices complained of. Neither can compliance by one or more carriers with a just order of the Commission lawfully depend upon the corresponding action or the consent of carriers not parties to the proceeding. While the interest of a carrier using the official classification, but not a party to the case, would ordinarily entitle it to appear and be heard in that proceeding upon application, the interest of such carrier is nevertheless indirect, is in the question involved rather than in the particular controversy, and not such an interest as in judicial proceedings would make it a necessary party to a suit. *Hurlburt v. Lake Shore & M. S. R. Co.* 2 Inters. Com. Rep. 81, 2 L. C. O. Rep. 122.

It is true that in some cases the principal carriers using the classification have been cited in or notified of the complaint, as prayed for by complainants or upon special application, but notice to or the bringing in of all such carriers in a case involving classification has never been considered requisite to the maintenance of such a proceeding, and to hold that such practice is necessary would place onerous and unjust burdens upon shippers seeking redress under the law. It is not a violent assumption that carriers in official classification territory, not parties hereto, would, upon continuance by the defendants of their compliance with our order in this case, or upon enforcement of such order by the court, have taken action in harmony therewith, but in case of contrary action by such carriers the law and the practice before the Commission and the courts authorize proceedings to require such carriers to justify their course. There is nothing in the suggestion that obedience by the defendants to the decision of the Commission would have tended to destroy any of the uniformity in classification which has been attained and which this Commission has always endeavored to promote.

In our report of this case, filed March 23, 1894, we discussed the misdescription of shipments by complainants and the apparent acquiescence therein by the defendants, and, while we declined to permit the defendants to plead such seeming violations of the law by complainants in bar of a decision on the merits, we also ruled that the individual interests of the complainants should not be taken into consideration in arriving at such decision. Though the complaint herein was filed about three years ago, and nearly two years have elapsed since the case was decided by the Commission, no prosecution of either of the complainants, or any person in their employ, on account of alleged improper billing of interstate shipments by or for them, has been instituted, nor, so far as appears on the record, has such a proceeding been requested by any carrier or person; and it must be presumed that such shipments of complainants, since the filing of our decision herein, have been properly described for the purpose of transportation. A ruling of the character above referred to is not to be held as continuing indefinitely against the complaining shippers, and where, after the lapse of a considerable time, repetition of the conduct held improper has not been shown, such a rule is justly to be regarded as having had its full effect at the time of its application. The circumstance that the present investigation and this report result from an order granting a rehearing ought not to call for reapplication of the ruling, if it would not be held applicable in a new proceeding involving the same subject-matter. The standing of complainants in this proceeding is now unaffected by the fact of the misdescription of freights found in our former report of the case, and that such misdescription and the practical acquiescence therein by defendants have become immaterial in this inquiry.

Another claim insisted upon by the defense is substantially that if the rates involved in the complaint against the classification of window shades are not shown to be unjust and unreasonable in themselves,—that is, practically without reference to rates charged by the roads on other commodities,—they ought not to be reduced. The terms “reasonable and just,” “unreasonable or unjust,” “undue or unreasonable preference or advantage,” “undue or unreasonable prejudice or disadvantage in any respect whatsoever,” and “unjust discrimination,” as used in the statute, imply comparison, and rates must bear just relation to each other as well



as be reasonable *per se*. *Eau Claire Board of Trade v. Chicago, M. & St. P. R. Co.* 4 Inters. Com. Rep. 65, 5 I. C. C. Rep. 264; *James v. Canadian P. R. Co.* 4 Inters. Com. Rep. 274, 5 I. C. C. Rep. 612; *Raymond v. Chicago, M. & St. P. R. Co.* 1 Inters. Com. Rep. 627, 1 I. C. C. Rep. 230; *Boards of Trade Union v. Chicago, M. & St. P. R. Co.* 1 Inters. Com. Rep. 608, 1 I. C. C. Rep. 215; *Interstate Commerce Commission v. Texas & P. R. Co.* 4 Inters. Com. Rep. 408, 57 Fed. Rep. 948. Whether complainants or other shade shippers have been prospering under the existing classification does not determine the question whether the classification of window shades is lawful. The aim of investigations under the provisions of the Act to Regulate Commerce is not to ascertain how high classification or rates the affected industries will stand; the purpose of such investigations is to determine the duties of carriers and the rights of shippers and the public under the law. *James v. Canadian P. R. Co. supra*. Much reliance also appears to be placed by the defendants upon a calculation that the reduction ordered by the Commission amounts only to from one third to one half a cent per single shade, while such reduction would diminish defendants' revenues about \$10,000 a year, and the earnings of all the roads using the classification would be decreased thereby to the extent of about \$50,000 annually. Similar results can, on the same basis, be figured and advanced with equal force in opposition to any complaint against alleged unlawful classification or rating under the statute. The fallacy of a comparison between the amount of a required reduction per single shade, in this case, or per pound or bushel or box in others, with the estimated effect of such reduction upon the total annual revenues of the carriers, ought to be apparent.

Complainants' factory is located at Minetto, N. Y. The class rates stated in the fifth finding of our report of March 23, 1894, as in force between Minetto, N. Y. and Chicago, Ill., were those in effect over the longer route *via* the Delaware, Lackawanna & Western road to Buffalo and its connection west. The class rates established over the defendants' route from Minetto to Chicago are as follows:

Classes	1	2	3	4	5	6
Rates	53	40	35	25	21	18

The reduction from first to third class rates on window shades from Minnetto to Chicago amounts, therefore, to 18 instead of 20 cents per hundred, as indicated in said finding.

We held in this case that it is the lawful duty of the defendants to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry, and that this requires a classification of window shades not higher than that of window hollands. Any material error appearing in the findings on which that conclusion is based should, of course, be corrected in this report. We shall not undertake, however, to find specifically whether each minor statement set forth in the findings of fact in that report and based upon the evidence in the first investigation is or is not affected by the additional testimony. The question for present consideration is whether, apart from the criticism contained in the decision of the court, the showing made upon rehearing calls for such modification of the findings or conclusions set forth in our report of March 23, 1894, which are hereby referred to and made a part hereof; as to require a change in the order of that date.

Just prior to January 1, 1895, the official classification committee placed shade cloth or hollands in class 2 of Official Classification No. 14, in force on that date, but this action was canceled by a circular before the change took effect. Besides complainants, one or two other shade manufacturers have at different times applied to the committee for a classification of shades lower than was then existing, but without success. Complainants claim that, on account of increased competition in the manufacture and sale of shades, they have been obliged, for some time past, to deduct freight charges from prices paid them for shades. Their total shipments for the year 1893 amounted to about 4,928,908 pounds. On the basis of 90 per cent having been shades, their shipments of the latter for that year may be estimated at 4,436,017 pounds, equal to 221 full car loads of 20,000 lbs. Complainants undertake to supply all the grades of shades in common use which the market will take. The best fringed shades made by them wholesale at about \$6.00 per dozen. For the year ending August 1, 1894, shades exceeding \$5.00 per dozen did not constitute 2 per cent of their sales.

It is stated in testimony that our decision in this case was un-

fair, because, "considering the classification of hollands in rolls as fair, after the hollands are cut into window-shade lengths, and rollers, slats, attachments, and decorations added, it must become more bulky and valuable, and the railroad companies should receive greater compensation for the transportation thereof." This assumes that all the shades which can be made from a 1200-yard case of hollands would, under our decision putting shades in the third class, be carried at no greater total charge than is earned from the carriage of a single case of hollands at third-class rates. But there is no foundation for such an assumption. As shown in our former findings and conclusions, the ordinary commercial shade complete, and even with some decoration, is worth much less (leaving the felt or paper shade out of consideration) than a case of similar size containing hollands or shade cloth. In such a shade the cloth or hollands forming the body of the shade far exceeds the other materials in value; and we demonstrated towards the end of our first report herein that the shades made from hollands would, under the third-class rates ordered for shades and the average weights shown, pay the carriers very much greater total transportation charges than those afforded by third-class rates on the quantity of hollands from which shades are made. As some changes have taken place in the average weights of shade cloth and shades since the first hearing of this case, a comparison based on evidence produced at the rehearing will be found further on in this report.

The size of complainants' 23-dozen case of shades, or 1200-yard case of hollands or shade cloth, is about  $42\frac{1}{2} \times 25\frac{1}{2} \times 20\frac{1}{2}$  inches, and the size of their 1-dozen case of shades is about  $5 \times 7\frac{1}{2} \times 44$  inches. The dimensions of the cases vary, of course, with the quantity of shades packed, but as the 23-dozen case containing shades is about equal in size to the case containing 1200 yards of hollands or shade cloth, it furnishes a convenient package for purposes of comparison.

The weight of complainants' 23-dozen case of shades varies, on the main grades, from 411 pounds for felts to 539 pounds for Senecas, and the average weight is about 473 pounds. The weight of the 1200-yard case of shade cloth appears to be from 466 pounds for felts to 661 pounds for Minettos, the average being about 546 pounds. A witness connected with another

shade-cloth factory states the average to be about 535 pounds. The difference in average weight between the case of shades and the case of hollands appears, therefore, to be from 62 to 73 pounds. The amount of filling and quantity of coloring used affect the weight of shade cloth, and this, together with differences in the size of shades, may cause variation in the weight of different shipments of the same quantity and grade of shades.

Notwithstanding the showing in our first decision of the relative values and the great excess of total transportation charges resulting from the carriage of 50 dozen shades over the revenue derived from carrying a 1200-yard case of hollands or shade cloth, it is insisted upon in testimony for the defense, that the value and classification of the materials used in the manufacture of the shades, besides shade cloth, did not receive due consideration. It is claimed that the other necessary materials include spring shade rollers, with their interior fixtures and end adjustments, shade slats, metallic brackets, tacks, and threads, in the case of the plain shade; fringe for the fringed shade, and aniline dyes and other dye stuffs, bronze or metal powders, flocks, and perhaps other articles, for the decorated shade. The classification of "shade rollers with end fixtures for same," and "shade slats, bundles, or boxes," is third class, less than carloads, and fifth class, carloads. These and practically all the other articles used in shade manufacture, except fringe, bronze, thread, and flocks, were mentioned in finding 8 of our first decision in a table showing classification of shade materials. Such omitted articles are in the first class, except that flocks has a fourth-class rating for carloads. There has been some change in the classification of aniline dyes; when shipped in cases these goods are first class, less than carloads, and third class, carloads; in kegs or barrels, second-class, less than carloads, and third class, carloads. The quantity of aniline dyes used by complainants is comparatively small; such dyes are purchased by them in 3 or 4 pound packages, and they get them by express. Complainants used in their manufacturing operations for the year ending August 1, 1894, only 2,300 pounds of thread on spools, 1,950 pounds of bronze, and 13,600 pounds of flocks, a total of 17,850 pounds. The first-class rate from Minnetto to Chicago applied on such total weight yield an aggregate of less than \$95.00, and if

sent at the third-class rate between those points the total amount would be only about \$33.00 less.

As before found in this case, from the 1200-yard case of hollands or shade cloth 50 dozen shades can be made, with the addition of slats, rollers, and attachments, etc. This number of shades will fill two 23-dozen cases similar in size to the case of hollands or cloth, and there will be 4 dozen shades left over. Complainants manufactured their main grades of shades during the year 1894 in the following percentages:

Minettos.....	16.59	per cent.
Senecas.....	14.50	" "
Ontarios.....	33.29	" "
Hollands.....	11.02	" "
Felts.....	24.60	" "

Ontarios and felts, therefore, constituted about 58 per cent of their shipments of these grades.

The following table shows the weights and values in evidence of complainants' 1200-yard case of each grade of hollands or shade cloth (size about  $42\frac{1}{2} \times 25\frac{1}{2} \times 20\frac{1}{4}$  inches); of their case of similar size containing 23 dozen shades, each grade; of two such cases, containing together 46 dozen shades, each grade; of a case containing 1 dozen shades, each grade (size about  $5 \times 7\frac{1}{2} \times 44$  inches); of 50 such cases containing together 50 dozen shades, each grade; and also the freight revenue between Minetto and Chicago on each of the above-mentioned quantities at the third-class rate of 35 cents per hundred pounds:

**WEIGHT AND VALUE.      FREIGHT REVENUE.      MINNETTO TO CHICAGO.**

GRADE.	Shade Cloth or Hol-lands, 1200 Yd. Case.		Shades. 23 Doz. Case.		Shades. Two 23 Doz. Cases.		Shades. One Dozen Case.		Shade Cloth or Hol-lands, 1200 Yd. Case.		Shades. 23 Dozen Case.	Shades. Two 23 Doz. Cases.	Shades. One Dozen Case. Actual Weight.	Shades. One Dozen Case. Minimum Weight.	Fifty 1 Doz. Cases.
	Wgt. Lbs.	Value Dolls.	Wgt. Lbs.	Value Dolls.	Wgt. Lbs.	Value Dolls.	Wgt. Lbs.	Value Dolls.	Wgt. Lbs.	Value Dolls.	Amt. Dolls.	Amt. Dolls.	Amt. Dolls.	Amt. Dolls.	Amt. Dolls.
Minnettos -----	661	132.00	524	69.00	1048	138.00	25	3.00	1250	150.00	1.83	3.66	.09	.35	4.38
Sencas -----	616	120.00	539	63.25	1078	124.50	26	2.75	1300	137.50	1.89	3.78	.09	.35	4.55
Ontarios -----	493	78.00	486	51.75	972	103.50	23	2.25	1150	112.50	1.70	3.40	.08	.35	4.03
Hollands -----	496	72.00	446	49.45	892	96.90	23	2.15	1100	107.50	1.56	3.12	.08	.35	3.85
Felts -----	466	24.00	411	25.30	822	50.60	21	1.10	1050	55.00	1.44	2.88	.07	.35	3.68

Shipments of 1-dozen packages weighing only 20 lbs. are mentioned in some portions of the testimony. It would seem that these packages must have contained shades of the lighter grades, such as "Felts" or "Hollands," for a 23-dozen case of "Ontarios" weighs about 486 lbs., equal to 21 lbs. per dozen, and to put up each dozen separately, even though somewhat lighter wood be used, must increase the total weight considerably. From weights given in evidence, a fair estimate of the average weight of the 1-dozen package appears to be about 23 lbs., and on this basis the total revenue for carrying 50 1-dozen packages from Minnetto to Chicago at third class amounts to \$4.03.

A 23-dozen case of shades weighs less than a case of hollands or cloth by from 7 to 137 lbs., but the value of a case of window hollands or shade cloth is nearly double that of a like case of "Minnetto" and "Seneca" shades, one and a half times for "Ontario" shades, and nearly so for "Holland" shades. The value of the case of felt or paper shades (the cheapest variety) is about equal to that of the felts from which they are made. Applying the 35-cent rate per 100 lbs. in force from Minnetto to Chicago, the freight revenue per 23-dozen case of shades is only from 3 to 48 cents less than the total charge for carrying a 1200-yard case of the same grade of shade cloth, and the 3-cent difference results from the carriage of the "Ontarios" grade, which constituted about one third of complainants' shipments of main grades in 1894.

Comparing a 1200-yard case of cloth with 46 dozen of the shades which can be made therefrom, the weight of two 23-dozen cases of shades, each having bulk similar to that of the case of cloth, exceeds the weight of the cloth case by from 356 to 479 lbs. and the total revenue from carrying the two cases is, as shown in the table, very much more than is received for transporting the case of cloth or hollands, while from \$6.00 to \$27.00 represents the excess in value of the two cases of shades over that of the case of hollands. In this comparison 4 out of the 50 dozen shades which may be made from the case of cloth have been left out of consideration.

Much stress is laid by the defendants upon the fact shown at the rehearing, that complainants, in compliance with the requirements of their wholesale customers, send most of their shades in cases of much less size than the case containing 23 dozen, and that

a large proportion of their shipments are made in the 1-dozen package. When but one such package, weighing from 20 to 26 lbs., is shipped to a consignee, the defendants, and other carriers using the classification, do not limit their charges to actual weight, but exact the full rate per 100 lbs., so that on such a shipment from Minnetto to Chicago their compensation would be 35 cents instead of from 7 to 9 cents, if based on the true weight. The same rule applies to the shipment of three such packages, or to any less weight than 100 lbs. But complainants may, for instance, ship ten or more of the 1-dozen packages to one consignee at the same time, and it is claimed that considerable extra cost of handling and account work is thereby entailed. On an average weight of 23 lbs. for the 1-dozen package, the defendants' Minnetto-Chicago third-class total revenue for carrying 50 of these small cases would be, as above shown, \$4.03. This gives them more than double the revenue which would result at the same rate on 546 lbs., the full average weight of a case of shade cloth or hollands. The total charge at the third-class rate of 35 cents per 100 lbs. on the 23-dozen case of shades, with an average weight of 473 lbs., would be \$1.66, and on 23 1-dozen packages of the same shades, average weight 23 lbs., or 529 lbs. total, it would be \$1.85, or 19 cents more for the extra weight of wooden boxing, extra handling, and clerical labor.

The defendants and other carriers using the official classification rarely make distinctions in classification of the same kind of freight on the score of value. Exceptions to this practice are found, however, in the classification of electrotype plates, engravings, paintings and pictures, statuary, bronze or metal, and stereotype plates, where the limitation of value is based upon the net invoice and required to be so expressed in the shipping receipts by shippers. The classification also contains rules restricting to specified sums the valuation of live stock; marble or granite; ore:—antimony, calamine, copper, lead, silver, tin, or mica; such valuation to be stated by the shipper in the shipping order or receipt. The carriers have never, in the official classification, classified shades or shade cloth or felts higher or lower on account of cost, price, or intrinsic value. Any kind of shades, whether worth \$10.00 a pair or \$1.00 per dozen, decorated or not, mounted or unmounted, packed in a case of small or large dimensions, can be



shipped at first-class rates; and of hollands or shade cloth, the case containing 1,200 yards, or a piece of 60 yards, if plain, uncut and undecorated, can be shipped, regardless of its value as compared with other hollands or shade cloth, at third-class rates. Neither party before the Commission at the first hearing suggested the fact of the different grades or values of shades as a proper basis for a distinction in the classification of that commodity, and it would seem that the defendants raised the question in court for the purpose of resisting the application to enforce our order, rather than with any idea that shades should be classified differently according to difference in their value. This view is fully supported by the fact that they have not endeavored to place shades of much greater value in a higher class than is named for shades generally, and by their claim at the rehearing that any effort to do so would prove impracticable. The elements of bulk, weight, value, and character are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification. Other considerations may also enter into the question, but in this case, where the comparisons made on these bases indicate the propriety of a like class for hollands or shade cloth and window shades made therefrom (the great mass of shades at least), such other matters must be deemed to have only minor weight and importance. It is true that this case is somewhat exceptional in the sense that a manufactured article is here held entitled to as low classification as is given to one of the constituent materials, but there are precedents for such ruling in the classification itself, and if justice is thereby accomplished the fact that they are exceptions to the general practice is not of itself a valid objection.

How the business of manufacturers of shade cloth, rollers, or shade attachments can, as is claimed, be materially damaged by a third-class rating for window shades, is difficult to understand. The cloth is, as shown, so much more valuable than the other usual materials together that the addition to a given quantity of cloth of a variety of much cheaper material results in a completed article which, bulk for bulk or weight for weight, is much less valuable than the cloth, and sending it at the rate per 100 lbs. applied to the cloth can hurt no one. The shade roller, complete with spring attachments, can be shipped at third class, less

than carloads, and fifth class for carloads, and a carload rating is not usually provided in the classification in the absence of fair showing that the commodity will move in carload quantities. However this may be, if it is right that shades should be classed with hollands, it is none the less right if it appears that, relatively, shade rollers in less than carloads would then be classed too high. The metal shade fixtures or attachments when separately shipped may be packed so that a very considerable number can be sent in small packages. The shade fixtures are more valuable than the simple wooden shade roller; the one is an article in the first class, the other is classed by the carriers as third class L. C. L., and fifth class C. L.; and combined, so as to make the complete shade roller with spring and end fixtures, the article is still classed by the carriers in the third class, less than carloads, and the fifth class in carloads. This practice of the carriers with shade rollers and fixtures strongly illustrates the principle of classification that we have endeavored to apply to the rating on window shades and window hollands or shade cloth.

The order heretofore issued in this case was no broader than the defendants' own classification of hollands, shades, and freight articles generally, and the carriers were thereby required to take no greater risks in the transportation of property than they voluntarily assume. Besides, it is difficult, if not impracticable, to provide and properly apply higher or lower classification according to difference in the *actual value* of the same kind of freight, as the value of the same freight must vary at different points and also in the course of commercial dealing. We are of the opinion that all shades should, in accordance with the practice as to freight articles generally, take a common rating based upon the commercial grades which constitute the great majority of window shade shipments. The circuit court, however, refused to enforce our order on the sole ground that it applied to the higher priced shades as well as to those having low value, and this may well be viewed as amounting to a direction in this case that the requirement expressed in the order should be modified so as to apply only to shades having relatively low valuation. As hereinbefore shown, the carriers using the official classification make the rating of various articles depend upon limitation of value at time of shipment, and we think that the criticism expressed in the opinion

of the circuit court will be met substantially if the requirement for a third-class rating of window shades is confined to those shipments on which the valuation is reasonably limited to \$6.00 per dozen or under. This disposition of the case will still leave the carriers at liberty to put all shades in the third class.

The order of March 23, 1894, will be vacated, and a new order will be entered containing the same general requirement, but with the proviso that the defendants may restrict their transportation of window shades at third-class rates to those on which the valuation is limited to a maximum of \$6.00 per dozen, and they may also prevent excessive undervaluation for transportation purposes of the much more expensive grades of shades by such regulations as they may be advised are just and lawful.

THE JOHNSTON-LARIMER DRY GOODS COMPANY,  
*Complainant*, V. THE ATCHISON, TOPEKA & SANTA  
FÉ RAILROAD COMPANY, AND ALDACE F.  
WALKER, JOHN J. McCOOK, AND JOSEPH C. WIL-  
SON, Receivers Thereof; THE GULF, COLORADO  
& SANTA FÉ RAILWAY COMPANY; THE ST.  
LOUIS & SAN FRANCISCO RAILWAY COM-  
PANY, AND ALDACE F. WALKER, JOHN J. Mc-  
COOK, AND JOSEPH C. WILSON, Receivers  
Thereof; THE INTERNATIONAL & GREAT  
NORTHERN RAILROAD COMPANY; THE HOUS-  
TON & TEXAS CENTRAL RAILROAD COMPANY;  
THE MISSOURI, KANSAS & TEXAS RAILWAY  
COMPANY; THE MISSOURI PACIFIC RAILWAY  
COMPANY; THE CHICAGO, ROCK ISLAND &  
PACIFIC RAILWAY COMPANY; THE CHICAGO,  
ROCK ISLAND & TEXAS RAILWAY COMPANY;  
AND THE ATCHISON, TOPEKA & SANTA FÉ  
RAILWAY COMPANY, *Defendants*.

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Decided May 12, 1896.

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1. Rates for the transportation of cotton piece goods, molasses, sugar, rice, or coffee from Galveston, Houston, or other shipping point in Texas to Wichita, Kansas, which are higher *via* defendant lines than rates on said commodities, respectively, from the same point of shipment to Kansas City and other "Missouri river points,"—*Held*, to be in violation of the provisions of the act to regulate commerce requiring reasonable and just transportation charges, and forbidding undue or unreasonable prejudice or disadvantage to any person, firm, corporation, or locality, or particular description of traffic, in any respect whatsoever. *Held, further*, That such higher rates to Wichita than to Kansas City or other "Missouri river points" *via* the lines of the Atchison, Topeka & Santa Fé Railway Company, and the Chicago, Rock Island & Pacific Railway Company, are in contravention of the fourth section of the act to regulate commerce.
2. Defendants required to correct their methods of announcing rates, changes in rates, and exceptions to rate sheets by participating lines, so that their rate schedules will be readily intelligible to shippers and consignees.

*Smythe & Douglass* and *John W. Douglass* for complainant.  
*M. A. Low* for C., R. I. & P. Ry. Co. and C., R. I. & T. Ry. Co.  
*J. H. Richards* for Mo. Pac. Ry. Co.

*Geo. R. Peck, Britton & Gray, Robert Dunlap, and Gardiner Lathrop* for A., T. & S. F. R. R. Co. and Receivers, St. Louis & S. F. Ry. Co. and Receivers, G., C. & S. F. Ry. Co. and A., T. & S. F. Ry. Co.

*James Hagerman and James Bryson* for M., K. & T. Ry. Co.  
*Baker, Botts, Baker, & Lovett* for H. & T. C. R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

*YEOMANS, Commissioner:*

The complainant alleges:

1. That it is a corporation doing business at Wichita, Kansas.
2. That defendants are common carriers subject to the provisions of the act to regulate commerce.
3. That defendants' rates for the transportation of freight articles from Galveston and other Texas points to Wichita, Kansas, are unjust and unreasonable in themselves.
4. That such rates are relatively unjust and unreasonable as compared with rates established by defendants for the transportation of freight articles from Galveston and other points in Texas to Kansas City, and other points on or near the Missouri river called and known as "Missouri river points."
5. That under such adjustment of freight rates by defendants, complainant and others, the city of Wichita, and traffic transported by defendants thereto, are subjected to unjust discrimination and undue and unreasonable prejudice and disadvantage in favor, and to the undue and unreasonable preference and advantage, of Kansas City and other Missouri river points, merchants and dealers at such points, and shippers thereto.
6. That under such rates more is unlawfully charged by defendants for the shorter distance to Wichita than for the longer distance, in the same direction, to Kansas City and said other Missouri river points.
7. That the defendants, by the aforesaid adjustment of rates, violate §§ 1, 2, 3, and 4 of the act to regulate commerce, and in support thereof defendants' tariffs required to be filed with this Commission are referred to and made part of the petition.
8. That the classification and rating and the commodity rates of defendants on freight articles to Galveston and other Texas destinations are the same from Wichita and Kansas City, while

their classification, rating, and commodity rates to Wichita and Kansas City from Texas points are not the same, but are materially, and in some instances nearly 100 per cent, higher to Wichita than to Kansas City; and in illustration thereof defendants' rates from Galveston on cotton-piece goods to Kansas City, of 45 cents per 100 lbs., and to Wichita, 200 miles less distance, of 84 cents per 100 lbs., are cited.

An order commanding the defendants to wholly cease and desist from the violations of law alleged, and such other and further orders as may be deemed necessary and the complainant's cause may require, are prayed for in the petition.

The defendants were duly served with a copy of the petition and notice to answer or satisfy the complaint within twenty days, and each of the defendants answered and specifically denied the violations alleged in the petition. In some of the answers it was also denied that the rates on cotton-piece goods from Galveston were 45 cents to Kansas City and 84 cents to Wichita. Another denial in one or more of the answers is of the allegation in the petition that south-bound rates from Kansas City and Wichita to Galveston are the same. It is claimed in the answer of the Missouri Pacific Railway Company that the transportation of freight from Galveston to Kansas City is under circumstances and conditions which are entirely different from those under which traffic from Galveston to Wichita is conducted; and the competition of other carriers, both rail and water, from Galveston, and of goods produced in the south and east and shipped to Kansas City, differences in the population along its line to Kansas City and upon its line to Wichita, and in the volume of traffic and expense of handling shipments from Galveston to Kansas City and Wichita, are alleged in justification of lower rates to Kansas City than to Wichita.

At the hearing, counsel for complainant stated that the complaint would cover about twenty different commodities, but that he only wished to present the facts in relation to six: cotton-piece goods; sugar; molasses; coffee; rice; and canned goods. The testimony of a number of witnesses on behalf of each side of the controversy was taken, and among such witnesses were dealers at Wichita in each of the commodities mentioned. The case was argued orally by counsel after submission of the testi-

mony, and printed briefs were subsequently filed. Subsequent to the hearing, the Atchison, Topeka & Santa Fé Railway Company, successor to the Atchison, Topeka & Santa Fé Railroad Company, appeared as a respondent in this case, and filed notice that as such respondent it relied upon the defense made by the last-named company and its receivers.

#### FACTS.

1. The complainant is a corporation engaged in the wholesale dry-goods trade at Wichita, Kansas, a city of about 25,000 inhabitants. About twelve or fifteen jobbing or wholesale firms in various branches of business are located at Wichita, and they compete with dealers and jobbers at Kansas City and other points for trade in central, western, and southern Kansas and Oklahoma territory.

2. Each of the defendants is engaged as a common carrier by railroad in the transportation of property from Galveston and other points in Texas; and over their roads joined together or with those of other carriers, so as to form various continuous lines, property is carried by continuous carriage or shipment and at through rates of charge from Galveston, Houston, Sugarland, and other Texas points, to Wichita, Kansas, Kansas City, Hannibal, St. Joseph, and St. Louis, Missouri, Atchison, Leavenworth, and Topeka, Kansas, Lincoln and Omaha, Nebraska, Council Bluffs and Sioux City, Iowa, Minneapolis and St. Paul, Minnesota, and other points in the United States.

3. The four delivering systems in this case are: the Atchison, Topeka & Santa Fé; the Chicago, Rock Island & Pacific; the Missouri Pacific, and the Missouri, Kansas & Texas. Traffic is carried over the Gulf, Colorado & Santa Fé and the Atchison, Topeka & Santa Fé roads from Galveston to Wichita, a distance of about 724 miles, or from Houston to Wichita, a distance of about 719 miles, and from Galveston and Houston to Kansas City, the distances being respectively about 952 and 947 miles, when the route is through Wichita. At Winfield, Kansas, the Santa Fé road has a branch running north and east of Wichita, through Augusta and Eldorado, to Florence, Kansas. Said branch is known in this case as the "Eldorado Cut-Off," and traffic by this line from Galveston for Kansas City may go over the Cut-Off and not pass through Wichita. By using the Cut-Off

the distance to Kansas City is decreased about 20 miles. Freight trains run over either route. The line through Wichita is the main line. The Santa Fé system has another route which it has used for some of its freight from Galveston or Houston to Kansas City. This is over the Gulf, Colorado & Santa Fé to Paris, Texas, the St. Louis & San Francisco to Monett, Missouri, and Cherryvale or Carl Junction, Kansas, and thence by divisions of the Santa Fé road to Kansas City, a total distance of from 1,015 to 1,033 miles, depending on junctions used. This system can also reach Kansas City from Galveston *via* Arkansas City and Winfield Junction, thence east to Cherryvale and northerly to Kansas City, a distance of 933 miles. Over any route used by the Santa Fé system, Wichita is nearer than Kansas City to Galveston by at least 200 miles.

The Chicago, Rock Island & Pacific system passes through Wichita in carrying freight shipped from Galveston or Houston to Kansas City and other Missouri river points. The Chicago, Rock Island & Texas Railway connects with the Chicago, Rock Island & Pacific at Terral, Indian territory, running northerly from Fort Worth, Texas, and Galveston or Houston goods may be carried to Fort Worth by the International & Great Northern and Texas Pacific. The distances from Galveston to Wichita and Kansas City *via* this route are: To Wichita, 759 miles; to Kansas City, 981 miles.

The Missouri Pacific Railway system and its connections, the Texas & Pacific and International & Great Northern, carry traffic from Galveston to Kansas City over a distance of about 1,044 miles. Traffic from Galveston to Wichita comes over this line as far as Yates Center, 908 miles, and thence 98 miles on the Fort Scott & Western Division of the Missouri Pacific to Wichita, a total distance of 1,006 miles. Another route to Wichita over this system and the same connecting roads is *via* Deering and Conway Springs, Kansas, with an aggregate distance of about 1,012 miles.

The Missouri, Kansas & Texas system has a route from Galveston *via* the International & Great Northern to Houston, the Missouri, Kansas & Texas Railway of Texas and the Missouri, Kansas & Texas Railway to Parsons, Kansas, 768 miles, thence 137 miles to Kansas City, a total of 905 miles. From Parson-



Wichita is reached by a branch of the Missouri, Kansas & Texas Railway to Piqua, and the Missouri Pacific to Wichita, 154 miles, or an aggregate distance, Galveston to Wichita, of 922 miles. In connection with the Houston & Texas Central and International & Great Northern, the Missouri, Kansas, & Texas Railway forms a route of 799 miles, Galveston to Kansas City; and Wichita may be reached by this route and the Missouri Pacific over a distance of about 816 miles.

The Houston & Texas Central railroad runs from Houston northerly to Denison, Texas, 338 miles, with several branch lines to and through important junction points with other roads. It connects with roads between Houston and Galveston, and it is a party to joint tariffs showing rates from Galveston and Houston to Wichita and Kansas City. The short line from Galveston to Wichita is *via* the Houston & Texas Central and Chicago, Rock Island & Pacific, 705 miles, and the distance to Kansas City by this route is 927 miles. Houston is about 50 miles northerly of Galveston by the International & Great Northern. Traffic shipped from that point is carried by all the defendants. Convenient names for the foregoing described routes are: "Rock Island" for the Chicago, Rock Island & Pacific route; "Santa Fé" for the Atchison, Topeka & Santa Fé route; "Missouri Pacific" for the system of that name and its connections; "M. K. & T." for the Missouri, Kansas & Texas system and connections; "Central" for the Houston & Texas Central and connections. The Wichita and Kansas City distances from Galveston *via* these routes are as follows:

	Wichita.	Kansas City.	Shorter distance to Wichita.	Shorter distance to Kansas City.
	Miles.	Miles.	Miles.	Miles.
<b>SANTA FE ROUTE—</b>				
Wichita lines.....	724	952	228	
Eldorado Cut-Off to Kansas City.....	----	932	208	
Paris Route to Kansas City.....	----	1015	291	
<b>ROCK ISLAND ROUTE...</b>	759	981	223	
<i>via</i> H. & T. C. R. R.	705	927	223	
<b>MISSOURI PAC. ROUTE...</b>	1006	1044	88	
<b>M. K. &amp; T. ROUTE....</b>	922	905		17
<i>via</i> H. & T. C. R. R.	816	799		17

Sugarland, Texas, is on the Sugarland Railway running between that point and Arcola Junction on the Gulf, Colorado, & Santa Fé, and International & Great Northern roads.

4. The Western Classification is in force over the defendant lines between Texas points and Wichita and Missouri river points, and their classification of the six commodities to which the testimony in this case is mainly directed is as follows: Cotton piece goods, any quantity, first class; canned goods, molasses, rice, sugar, and coffee, in carloads, fifth class. An exception to the classification provides for canned goods a rate of 10 cents less than fifth class on "Texas Interstate Freight." The first-class rate is \$1.30 per 100 pounds, and the fifth-class rate is 70 cents per 100 pounds, from Galveston or Houston to Wichita, Kansas City, Atchison, Leavenworth, and St. Joseph; and from the same points to Omaha, Council Bluffs or Lincoln such rates are \$1.50, first class, and 77 cents, fifth class. The rates hereinafter named as in force to Kansas City will be understood to apply also to Atchison, Leavenworth and St. Joseph, unless otherwise specified. At the time when the complaint was filed, April 10, 1895, the special or commodity rate of 45 cents on cotton piece goods from Galveston or Houston to Kansas City was, as appears by tariffs on file, in effect *via* the various defendant routes, except the Santa Fé, which had canceled such rate some months before; and the commodity rate of 84 cents on cotton piece goods from Galveston or Houston to Wichita, at that time, was, by the tariffs, only in force over the "Central" and participating connections. It appears, however, that cotton piece goods were carried for the complainant over the Santa Fé route from Galveston to Wichita at the 84-cent rate, both before and after this case was instituted. The rate sheets show, however, that during a period commencing some time before and ending soon after the filing of the complaint rates on cotton piece goods were changed by all the defendants so that the tariff rate to Wichita from Galveston or Houston *via* any line was made the first-class rate of \$1.30, and this rate, by cancellation of the special 45-cent rate, was also made effective to Kansas City *via* the Santa Fé and Rock Island routes, and apparently by the "Central" and connections.

The present rate on cotton piece goods *via* the Rock Island route is still \$1.30 (first-class rate) from Galveston or Houston to

Wichita or Kansas City. By all the other defendant routes cotton piece goods rates from Galveston or Houston are \$1.30 to Wichita, 66 cents to Kansas City, and 71 cents to Omaha, Council Bluffs and Lincoln. This 66-cent rate to Kansas City was put in force by the International & Great Northern and some of its connections on or about May 4, 1895, but about a month later the 45-cent rate was restored, and on August 1, 1895, the 66-cent rate was again put into effect. The rate on cotton piece goods, Galveston to Wichita, was by one increase raised from 84 cents to \$1.30. Practically no cotton piece goods are carried from Galveston to Wichita under the \$1.30 rate.

Joint Freight Tariff J. B. 1760—H of the Texas & Pacific Railway Company, effective January 10, 1895, and applying on commodities *via* the Rock Island and Missouri Pacific routes from "Texas common points" on the T. & P. Ry. to Missouri and Mississippi river points, and distinctly referred to at the hearing, named the 45-cent special rate on cotton piece goods to Kansas City; and a notation on that tariff states that "Kansas City rates will also apply from Dallas and Manchester to Topeka and Wichita, Kansas (*via* C. R. I. & P. and Missouri Pacific R'ys.)." This seems to have been superseded by Supplement No. 1, effective June 4, 1895, and amendments thereto, cancelling rates on cotton piece goods *via* the Rock Island route, and also making rates apply to points named only.

This tariff, Texas & Pacific J. B. No. 1760—H, was, so far as it applies on cotton factory products, superseded on August 1, 1895, by Texas & Pacific Joint Through Freight Tariff 1992—H, also numbered Mo. Pac. No. I. S. 5538, and C. R. I. & T. No. 429, applying from Dallas, Fort Worth, Sherman, and other Texas producing points on the Texas & Pacific Railway, to St. Louis and Kansas City, Missouri; Chicago, Illinois; Milwaukee, Wisconsin; Cincinnati, Ohio; Louisville, Kentucky; New Orleans, Louisiana, and other points named in the tariff. The participation of the Rock Island route in rates named is limited to destination points specified which are prefixed by a "†" mark. The Santa Fé roads and the M. K. & T. route, though named in the tariff, do not appear to have concurred therein. The Missouri Pacific Railway Company is a party to the tariff. This rate sheet names rates on cotton piece goods from points on the Texas & Pacific Railway in Texas

to a large number of points in Michigan, Ohio, Illinois, Missouri, Indiana, Nebraska, Kansas, Pennsylvania, Iowa, Wisconsin, Arkansas, Tennessee, Kentucky, Mississippi, Minnesota, Louisiana, and South Dakota. The highest rate named in such tariff from Texas & Pacific points in Texas is 92 cents to Eau Claire, Wisconsin, Minnesota Transfer, Stillwater, and Winona, Minnesota. The distance by the Missouri Pacific route from such shipping points to these places is nearly, if not fully, double the distance to Wichita. The following rates on cotton piece goods from said points are also established by this tariff and supplements: To Chicago, 46 cents; St. Louis, 41 cents; ‡St. Paul and ‡Minneapolis, 83 cents; ‡Waterloo, Iowa, 71 cents; Peoria, Illinois, 57 cents; ‡Des Moines, 71 cents; ‡Omaha, ‡Council Bluffs, and ‡Lincoln, 71 cents; ‡Kansas City, ‡Atchison, ‡Leavenworth, and ‡St. Joseph, 66 cents; New Orleans, 38 cents; Greenville, Mississippi, 36 cents; Nashville, Tennessee, 43 cents; Chattanooga, Tennessee, 68 cents; Sharon, Pennsylvania, 69 cents; Detroit, Michigan, 68 cents; ‡Cedar Rapids and ‡Cedar Falls, Iowa, 71 cents; Cincinnati, Ohio, 46 cents; Cleveland, Ohio, 69 cents; Chillicothe, Ohio, 66 cents; Sioux City, Iowa, 76 cents. Points named with the prefix ‡ take rates specified *via* the Rock Island route. Wichita is not named in this tariff, but the Rock Island does not charge more to Wichita on cotton-piece goods from Texas points than is charged over the same line to Kansas City and other Missouri river points or other longer distance destinations.

On canned goods, carloads, the rates *via* all the lines from Galveston or Houston were, at the time of the complaint, and have since continued to be, 60 cents to Wichita and Kansas City and 67 cents to Omaha, Council Bluffs and Lincoln.

On molasses, carloads, from Galveston and Houston, rates *via* the Santa Fé route were, at the time of the complaint, 50 cents to Wichita, 30 cents to Kansas City, and 38 cents to Omaha, Council Bluffs and Lincoln. The present rate to Wichita is 68 cents *via* the Santa Fé and Central routes, and 70 cents over the other lines, and rates *via* the various lines are 35 cents to Kansas City and 38 cents to Omaha or Council Bluffs, except by the Rock Island route, which is understood to have the fifth-class rate in effect to all of the points. From Sugarland, *via* lines other than the Rock Island, the molasses rate is 68 cents to Wichita, 30 cents to Kansas City, and 33 cents to Omaha.

On sugar, carloads, from Galveston or Houston, *via* the M. K. & T. route, a 70-cent or fifth-class rate is and has been in force to Wichita since the date of complaint. A 25-cent rate was in effect at that time to Kansas City, but the rate to this point is now 30 cents, and Omaha has a 33-cent rate. A rate of 50 cents was then and now is in force to Wichita by the other lines, except the Rock Island (70 cents). The rate to Kansas City is 30 cents by all the lines (including the Rock Island). To Omaha or Council Bluffs it is 33 and to Lincoln 36 cents. Sugarland rates to these points are the same as from Galveston or Houston.

On rice, carloads, from Galveston or Houston, a rate of 68 cents is now and since the complaint has been in force to Wichita *via* the Santa Fé route and the Central, while the other lines have had only the regular fifth-class rate of 70 cents in effect to Wichita. All of the lines except the Rock Island charge a 35-cent rate to Kansas City, to Omaha 38, and Lincoln 41. The Rock Island route claims only to have had the class rate in force to all these points.

On coffee, in carloads, the 70-cent, fifth-class, rate, from Galveston or Houston, has been and still is in force to Wichita, except *via* Santa Fé, Missouri Pacific, and Central routes, over which the rate is 68 cents. All the lines except the Rock Island have charged and still have in force a rate on coffee of 25 cents to Kansas City and 35 cents to Omaha. Over the Rock Island the fifth-class rate applies.

The present rate adjustment on these commodities is that over the Rock Island route the first-class rate of \$1.30 is in force on cotton piece goods, and the fifth-class rate of 70 cents is in effect on the other commodities (except canned goods, which take a rate of 60 cents), not only to Wichita, but also to Kansas City. A further exception is sugar, on which the Rock Island roads join in a 30-cent rate to the last-named point. Over the Santa Fé, Missouri Pacific, and Central routes, the rates are as follows from Galveston or Houston:

To	Cotton piece goods.	Canned goods.	Molasses.	Sugar.	Rice.	Coffee.
Wichita .....	130	60	68	50	68	68
Kansas City .....	66	60	35	30	35	25
Omaha or Coun- cil Bluffs .....	71	67	38	33	38	35
Lincoln .....	71	67	41	36	41	36

Substantially the same rates are in effect on the M. K. & T. route, except that the fifth-class rate of 70 cents is charged to Wichita on molasses, rice, sugar, and coffee.

The rates *via* the Rock Island, Santa Fé, and Missouri Pacific lines from Kansas City, Atchison, Leavenworth, or St. Joseph to Wichita on each of these commodities, are as follows:

*Rates in cents per 100 lbs. from Kansas City, Atchison, Leavenworth, or St. Joseph to Wichita.*

FIRST-CLASS.

FIFTH-CLASS.

Cottonpiece goods.	Canned goods.	Molasses.	Sugar.	Rice.	Coffee.
66	36	36	36	36	36

Following is a comparison of lowest combination rates to Wichita from Galveston or Houston *via* Kansas City, with lowest straight rates to Wichita from Galveston or Houston, except as to canned goods, on which the rates to Wichita and Kansas City are the same:

	Cotton piece goods.	Molasses.	Sugar.	Rice.	Coffee.
Combination Rates..	132	71	66	71	61
Straight Rates .....	180	68	50	68	68

The tariffs showing rates from Galveston, Houston, and other Texas points are modified by many supplements, advance notices to supplements, and exceptions as to particular roads, and most, if not all, of them, purport to apply over roads which have not filed notices of concurrence, although such tariffs were obviously intended to so apply. The participation of some nonconcurring roads is distinctly limited in several tariffs to particular points or specified commodities. For these and other similar reasons even expert examiners of rate sheets are unable to state with certainty what rates have been and are in force over the defendant lines to all the points named in the above and following findings.

5. The distance from Chicago to Kansas City and Wichita is 458 miles to Kansas City and 686 miles to Wichita by the Santa Fé route, 518 miles to Kansas City, and 742 miles to Wichita by

the Rock Island. The first and fifth class rates from Chicago to Kansas City and Wichita are: .Kansas City, first class, 80 cents, fifth class, 27 cents; Wichita, first class, \$1.39½, fifth class, 60 cents. The rates from Chicago to Kansas City and Wichita by these routes on the commodities in question are:

To	Cotton-piece Goods.	Canned Goods.	Molasses.	Sugar.	Rice.	Coffee.
Kansas City-----	50	27	27	27	27	27
Wichita -----	111	60	60	60	60	60

The through rates to Wichita from Chicago are 5 cents less on cotton piece goods and 3 cents less on the other commodities than the combination of rates to and from Kansas City. For example, the cotton piece goods rate, Chicago to Kansas City, is 50 cents, and Kansas City to Wichita, 66 cents, or a total of \$1.16, while the through rate is \$1.11.

6. Rates on cotton piece goods from Anniston, Atlanta, and points taking the same rates, are 45 cents to St. Louis, 80 cents to Kansas City, and \$1.41 to Wichita, and from Columbia, S. C., the rates are 7 cents higher. Other named cotton factory shipping points in Georgia and South Carolina take certain arbitraries higher. These rates are set forth in Southern States Freight Association Cotton Factory Products Tariff No. 2—A. W., effective January 16, 1896. The rate on this commodity from St. Louis to Kansas City is 35 cents, and the 80-cent rate from Anniston and other points above mentioned to Kansas City is a combination of rates east and west of St. Louis or the Mississippi river. The rate to Wichita of \$1.41 is 5 cents less than the sum of rates to St. Louis, thence to Kansas City, and from that point to Wichita. The distance from Atlanta to St. Louis by the Nashville, Chattanooga & St. Louis, and Louisville & Nashville, is 609 miles, and from St. Louis to Kansas City by the Wabash road the distance is 277 miles, and by the Missouri Pacific, 283 miles. From St. Louis to Wichita by the Missouri Pacific the distance is about 484 miles, and by the St. Louis & San Francisco it is 505 miles. The short distance over these routes from Atlanta to Wichita is about 1,093 miles, and from

Atlanta to Kansas City it is 886 miles. Rates from St. Louis to Kansas City and Wichita on each of the six commodities, as shown in Missouri Pacific Joint Freight Tariff, I. C. C. No. 120, are:

To	Cotton-piece Goods.	Canned Goods.	Molasses.	Sugar.	Rice.	Coffee.
Kansas City.....	35	22	22	22	22	22
Wichita.....	96	55	55	55	55	55

7. Rates on the six commodities in question from New Orleans to St. Louis, Kansas City, and Wichita, as shown by tariffs filed, and applying over the Missouri Pacific and Texas & Pacific to St. Louis and also *via* the Illinois Central and connections to all of the destinations are as follows:

To	FROM NEW ORLEANS					
	Cotton-piece Goods.	Canned Goods.	Molasses.	Sugar.	Rice.	Coffee.
St. Louis.....	27	25	16	20	20	25
Kansas City.....	66	35	35	30	35	35
Wichita.....	189½	60	68	50	68	68

Under these rates cotton piece goods from New Orleans can be shipped to and reshipped from St. Louis to Kansas City at a combination rate of 62 cents, while the direct rate to Kansas City is 66 cents. And these goods can be again reshipped from Kansas City to Wichita at a 66-cent rate, or a total combination rate after three shipments of \$1.28, as against the through rate from New Orleans to Wichita of \$1.39½, and as compared with the \$1.41 through rate from Atlanta to Wichita, or the \$1.30 rate from Galveston to Wichita on a direct shipment. A still lower combination on cotton piece goods is made by adding the rate from New Orleans to St. Louis, 27 cents, to the 96-cent rate from that point to Wichita, which gives a total of \$1.23, New Orleans to Wichita *via* St. Louis, as against rates of \$1.39½ direct from New



Orleans, \$1.41 direct from Atlanta, and \$1.30 direct from Galveston. Rates on cotton piece goods, as shown in M. K. & T. Joint Freight Tariff No. 658, and amendments, purporting to apply over the defendant roads and others, except the Atchison, Topeka & Santa Fé, and the Gulf, Colorado & Santa Fé roads, and in force from Texas producing points to various points, are, in cents, as follows: To Memphis, Tennessee, 38; Cairo, Illinois, 40; Fort Smith, Arkansas, 41; Little Rock, Arkansas, 41; St. Louis, Missouri, 41; Chicago, Illinois, 46; Milwaukee, Wisconsin, 54; Kansas City, Missouri, 66; Sioux Falls, South Dakota, 81; Sioux City, Iowa, 76; Omaha, Nebraska, 71; St. Paul, Minnesota, 83; Wichita, 130. Cotton piece goods are made at Galveston. The same tariff names a coffee rate from Galveston or Houston to St. Louis of 25 cents, and to Omaha, Minneapolis, or St. Paul of 35 cents, and on rice from Galveston or Houston to St. Louis of 25 cents. M. K. & T. Joint Freight Tariff No. 621, I. C. C. No. 71, naming rates on sugar and molasses from Houston and Galveston or Sugarland, provides a rate to St. Louis on these commodities of 25 cents.

Joint Interstate Freight Tariff No. 2—D, I. C. C. No. 2, issued by L. F. Day, chairman, and to which all the defendants are parties, provides, rates on cotton-piece goods to Houston or Galveston as follows: *From* St. Louis or Kansas City, 59 cents; Memphis, 49 cents; New Orleans, 35 cents; Omaha, Chicago, Cincinnati, Milwaukee, 79 cents; Pittsburg, Pennsylvania, \$1.09; Knoxville, Tennessee, 99 cents; Nashville, 65 cents; Louisville, 70 cents. Cotton piece goods may be shipped from Galveston *via* New Orleans to St. Louis under a combination rate of 57 cents made by adding Joint Commodity Tariff on cotton factory products, "Sunset and Central Routes," rate of 30 cents Galveston to New Orleans to the 27-cent rate in force from New Orleans. The rate named in that tariff on cotton-piece goods, Galveston to St. Louis, is 41 cents, and Galveston to Kansas City, 66 cents.

8. There is active competition between the carriers engaged in transporting cotton piece goods, canned goods, molasses, sugar, rice, and coffee from the various points of supply to points of distribution and sale. Water transportation between New Orleans, St. Louis, and other Mississippi river points has forceful

effect upon rail rates on traffic which might otherwise go by the river, between such points. Galveston and New Orleans are rival ocean ports, and the rail rates to Missouri river and Mississippi river points are made by the carriers from Galveston with reference to existing rates from New Orleans. Water competition by way of the Missouri river from St. Louis to Kansas City is not active nor of controlling force, but rail rates from St. Louis to Missouri river points in connection with low rates up the Mississippi do together affect the amount of rail rates from southern points to Kansas City.

Business competition, which, as the prior findings show, is so greatly promoted by relatively low rates at Missouri river points and other places mentioned, is hampered and restrained by relatively high rates in force from all the various points of supply to Wichita, where large jobbing interests are located and in active competition with wholesale dealers at Kansas City and other favored points for the trade of a considerable portion of Kansas and Oklahoma territory. The Wichita jobbers, though much nearer than the Kansas City dealers to Galveston and other Texas points of supply, by some of the defendant lines, are unable, under existing railroad rates, to compete on even terms with their competitors, except at points where the rates to and back from Kansas City equal the rates direct to Wichita, and such points are near to or westerly of Wichita. This inability of Wichita dealers, through relatively unfavorable railroad rates, to compete in intervening territory with the more distant Kansas City jobbers and those at other points on the Missouri, without considerable loss, tends to prevent local dealers at places in Kansas and in Oklahoma from buying at the nearer Wichita market. Lower rail rates from Galveston to Wichita on the commodities in question would enable the Wichita dealers to extend their competition with Kansas City and other Missouri river points, and if such rates were considerably lower than at present, the cheaper water routes to Galveston from the east and southeast could be utilized by Wichita merchants in connection with the rail lines from Galveston for the transportation of goods which now, of necessity, come to Wichita by the all-rail lines from eastern and southeastern and southern states. The Santa Fé, Rock Island, Missouri Pacific, and M. K. & T. routes all ope-

rate lines of railway across the Missouri river to Chicago or St. Louis, but, as shown in the foregoing findings, rates on these commodities to Wichita are either the sum of charges to and from Missouri river points or slight differentials lower. The failure of the defendant and other lines to establish rates across the Missouri river upon the usual basis of decrease in rates per mile as mileage increases is one of the main causes of the relatively high rates in force from Galveston to Wichita and other destinations west of the Missouri, and it largely operates to deprive Wichita of the benefits of rate competition to that point. Agriculture is the main industry of the state of Kansas and Oklahoma territory, and agricultural products of that region are sold in competition with those raised in other agricultural sections of the country. The rates on traffic shipped from Kansas City and Wichita to Galveston are substantially the same. Any reduction, through legitimate means, of the cost in the section about Wichita of such staple articles of food and clothing as the commodities involved in this proceeding, would be in the interest of consumers and trade in that territory.

9. The cost of transportation to the defendant carriers of such carload freight as sugar, molasses, rice, and coffee, or of cotton piece goods, which are shipped at rates named in any quantity, is not shown, after full hearing, to be more to Wichita than it is to Kansas City on shipments from Galveston and other points in Texas by the Santa Fé or Rock Island route. Since the complaint was filed, rates to Kansas City and other Missouri river points have been considerably increased on cotton-piece goods and slightly on one or two of the other commodities. As to the Missouri Pacific and M. K. & T. routes, while the mileage of the first is but little greater to Kansas City than to Wichita, and the distance *via* the latter route is slightly less to Kansas City than to Wichita, these routes join in rates to other much more distant destinations at rates from Galveston, which are a great deal lower than rates in force over those lines from Galveston and other Texas points to Wichita. The cost of transportation *via* these routes to Wichita is not, after full hearing, shown to be in excess of the total expense of carriage to Omaha, Council Bluffs, or Lincoln, the distance to these points from Galveston being about 200 or more miles greater than the distance to Wichita from Galveston.

10. Using the Santa Fé for illustration, and its short mileage to Wichita and Kansas City, the rates per ton per mile yielded by the rates in force over that route on the six commodities from Galveston to Wichita and Kansas City are as follows:

RATES PER TON PER MILE FROM GALVESTON.						
To	Cotton piece Goods.	Canned Goods.	Molasses.	Sugar.	Rice.	Coffee.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Wichita .....	8.59	1.66	1.88	1.87	1.87	1.87
Kansas City .....	1.41	1.38	0.75	0.64	0.78	0.54

The average rate per ton per mile received by carriers throughout the United States during the year ended June 30, 1894, was .860 cents. In Territorial Groups 8 and 9 of the United States as shown in "Statistics of Railways" for that year, and which cover the section under consideration, such average was 1.054 cents for Group 8, and 1.209 cents for Group 9. The rates per ton per mile above shown to Kansas City from Galveston on molasses, sugar, rice, and coffee are therefore considerably below the average rates per ton per mile on all traffic in the United States during the year mentioned, and very much less than such averages for Groups 8 and 9. The rate per ton per mile received on coffee from Galveston to Kansas City, a little over  $\frac{1}{2}$  a cent, is extremely low for an article of that value and character. If taken at its class rate of 70 cents (fifth-class), coffee would yield a rate per ton per mile over the Santa Fé route of  $1\frac{1}{2}$  cents. Rates now in force to Kansas City from Galveston would, if applied on like traffic to Wichita, yield much higher rates per ton per mile to the Santa Fé and other routes over which the mileage is considerably less to Wichita than to Kansas City, and the same is true of the Missouri Pacific and M. K. & T. routes to Wichita as compared with Omaha, Lincoln, or Council Bluffs.

11. The commodities in question—cotton piece goods, canned goods, molasses, rice, sugar, and coffee—are transported from Galveston and other Texas points to Wichita, Kansas City, Leavenworth, Atchison, St. Joseph, or to Omaha or Council

Bluffs, as the case may be, under similar circumstances and conditions as to billing, value, and risk of carriage; and differences in distance and the carriers' cost of transportation are in favor of Wichita.

12. The "circumstances and conditions" do not warrant the transportation from Galveston or other Texas points to Wichita of either of the commodities involved herein at any higher rate over the Missouri Pacific or M. K. & T. route than is charged over lines of said defendants for the transportation of said commodities from the same point to Omaha, Nebraska, or Council Bluffs, Iowa, both of which are "Missouri river points," nor at any higher rate over any of the other defendant routes than is charged over such route for the transportation of said commodities from the same point to Kansas City or St. Joseph, Missouri, or Leavenworth or Atchison, Kansas, also known as "Missouri river points;" and any such higher rate is unreasonable, unjust, and unduly and unreasonably prejudicial to the complainant and other interested dealers at Wichita.

#### CONCLUSIONS.

The evidence in this case discloses, and the facts found show, that rates on the commodities in question from Galveston and other Texas points to points on the Missouri river are made by the carriers to meet, or be in close relation with, rates in force from New Orleans and other southern, southeastern and eastern points of supply, and that rates to Wichita from Galveston or Houston are established with reference to rates from Galveston and other shipping points to Missouri river points added to the local rates from the Missouri river to Wichita. The ground seriously urged by the defendants in support of the great disparities in rates shown in this case is competition with other lines reaching Missouri river points, or, rather, that greater competition exists at these points than at Wichita, for traffic to Wichita from all markets is also subject to such competition as the carriers see fit to practice. All the facts which pertain directly to the conduct of transportation from Texas points support the view of complainant that Wichita should have rates as low as those to Kansas City and other Missouri river points; and against any difference in the force of carriers' competition at Wichita and such other points is

to be considered the competitive business relations of Wichita with Kansas City and other places on the Missouri river, and the interests of consumers and local dealers in Kansas and Oklahoma.

All the evidence and arguments advanced in favor of either side have been given full and due consideration, and we hold that transportation of these commodities from Texas points by the Chicago, Rock Island & Pacific Railway, or the Atchison, Topeka & Santa Fé road, alone or with other defendants or other roads in Texas, to Wichita and Kansas City, or other Missouri river points, comes under the prohibition of the 4th section. The circumstance that the Santa Fé can, if it sees fit, carry traffic through Wichita or *via* a cut-off near to Wichita, which reduces its distance to Kansas City, Atchison, Leavenworth, or St. Joseph, only about 20 miles, is not sufficient to make that section and its prohibitory rule inapplicable to the Santa Fé line. *Logan v. Chicago & N. W. R. Co.* 2 Inters. Com. Rep. 431, 2 I. C. C. Rep. 604.

The route to Kansas City and other Missouri river points of the Santa Fé and its affiliated road, the St. Louis & San Francisco, *via* Monett, Missouri, is considerably longer than its route running through or near Wichita; and sending Missouri river points traffic in these articles by the longer route at lower rates, while similar goods for Wichita go by the more direct line to the Missouri river at higher rates, would constitute an evasion of duty which we think the 4th section prohibits, and which certainly would be in contravention of the provisions against unlawful prejudice and unjust discrimination.

We also find, upon the facts, that any greater aggregate charge established or enforced by any of the defendant carriers (except the Missouri Pacific Railway Company and the Missouri, Kansas & Texas Railway Company) for the transportation of either cotton piece goods, molasses, sugar, rice, or coffee from Galveston, Houston, or other shipping point in Texas to Wichita than is contemporaneously charged or participated in by such carrier for the transportation of like traffic from the same shipping point to Kansas City, Atchison, Leavenworth, or St. Joseph, is unlawful, and in violation of the provisions of the act to regulate commerce requiring reasonable and just transportation charges, and forbidding undue and unreasonable prejudice or disadvantage to any person, firm, corporation, locality, or particular description of

traffic, in any respect whatsoever; and that any greater aggregate charge established or enforced by the Missouri Pacific Railway Company or the Missouri, Kansas & Texas Railway Company, for the transportation of either cotton piece goods, molasses, sugar, rice, or coffee from Galveston, Houston, or other shipping point in Texas to Wichita than is contemporaneously charged or participated in by such carrier for the transportation of like traffic from the same shipping point to Omaha or Council Bluffs is also unlawful, and in violation of said provisions of the regulating statute. Formal order will be entered directing the several defendants to cease and desist from the violations of law above set forth.

Rates on canned goods are not higher to Wichita than to Missouri river points, and no order is now required as to such rates.

The defendants will also be expected to correct their methods of announcing rates, changes in rates, and exceptions to rate sheets by participating lines, so that their rate schedules will be readily intelligible to shippers and consignees.

E. D. McCLELEN, W. M. ELGIN, JABE C. FAUGHENDER, ROBERTS & STEWART, AND JOHN C. WOOLF V. THE SOUTHERN RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CUMBERLAND VALLEY RAILROAD COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE NORFOLK & WESTERN RAILROAD COMPANY AND F. J. KIMBALL AND HENRY FINK, Receivers Thereof; THE BALTIMORE, CHESAPEAKE & RICHMOND STEAMBOAT COMPANY.

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E. D. McCLELEN, W. M. ELGIN, JABE C. FAUGHENDER, ROBERTS & STEWART, AND JOHN C. WOOLF V. THE SOUTHERN RAILWAY COMPANY; THE CHATTANOOGA, ROME & COLUMBUS RAILROAD RAILROAD COMPANY AND EUGENE E. JONES, the Receiver Thereof; THE EAST & WEST RAILROAD COMPANY.

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Complaints filed March 7, 1895.—Answers filed March 25—April 19, 1895.—Hearing at Piedmont, Alabama, August 8, 1895.—Decided June 6, 1896.

1. The exaction, without lawful excuse, of a greater compensation in the aggregate for the shorter than for the longer haul over the same line in the same direction, the shorter being included in the longer, which is forbidden by § 4 of the Act to regulate commerce, is only a form of unjust discrimination or undue preference, to which, it seems, Congress desired to call particular attention because of its prevalence in certain sections of the country.
2. Competition by a carrier subject to the Act to regulate commerce, and all matters relative thereto, may be presented to the Commission for determina-



tion upon application of defendants for relief from the operation of the 4th section of the act, under the proviso to said act.

(Nos. 404, 405.)

*S. D. J. Brothers* and *W. J. Brock* for complainants.  
*W. A. Henderson* for the Southern Railway Company.  
*B. Cowden* for the East & West Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

*YEOMANS, Commissioner:*

In the first-entitled case the complainant, E. D. McClelen, mayor of the city of Piedmont, Alabama, with the other complainants, grocers and general merchants doing business in the said city of Piedmont, allege that the defendants are common carriers "engaged in the interstate transportation of property by continuous carriage or shipment over various lines or routes, wholly by railroad between points in the States of New York, Pennsylvania, Maryland, Virginia and Tennessee, and points in the State of Alabama."

The complainants further allege in substance:

1. That defendants have established rates for the transportation from Baltimore, Maryland, to Piedmont and Anniston, Alabama, of property covered by the Southern Railway & Steamship Association Classification as follows:

To ANNISTON, ALABAMA:	RATES IN CENTS PER 100 POUNDS.											
	CLASSES.											Per bbl.
	1	2	3	4	5	6	A	B	C	D	E	F
Rail and Water	107	92	81	68	56	46	34	45	37	36	55	73
All Rail	119	102	90	76	62	51	39	50	42	41	61	88
To PIEDMONT, ALABAMA:												
Rail and Water	125	108	95	80	66	54	No rates named					
All Rail	137	118	104	88	72	59						

2. That rates *via* defendants' lines from New York and Philadelphia are similar in relation to those set forth as applying from Baltimore to Piedmont and Anniston, and that Piedmont is on

the direct line to Anniston when traffic from either New York, Philadelphia, or Baltimore is routed *via* Norfolk & Western Railroad and the Western Division of the Southern Railway.

3. That the above-named rates from New York, Philadelphia and Baltimore to Piedmont are unreasonable and unjust as compared with the above-described rates, established and charged by defendants for carrying like traffic from New York, Baltimore, or Philadelphia to Anniston, and that defendants in thus giving an undue and unreasonable preference or advantage to Anniston and subjecting Piedmont and those doing business in the surrounding country to an undue prejudice or disadvantage, are in violation of the Act to regulate commerce.

4. That defendants are guilty of a violation of § 4 of the Act in that said rates are greater for the transportation of "like kind of property" for the shorter distances from New York, Philadelphia, or Baltimore to Piedmont than for the longer distances over the same line in the same direction from the same points of shipment to Anniston.

The complaint also alleges a violation of the 6th section of the Act in that the defendants fail to make and publish schedules of rates for the transportation of property embraced in classes A, B, C, D, E, F and H, from New York, Philadelphia and Baltimore to Piedmont, and do make and publish such schedules of rates for the transportation of property covered by said classes from the above-named points of shipment to Anniston, but this allegation was abandoned at the hearing.

The prayer of complainants is that this Commission make an order "commanding the said defendants and each of them to wholly cease and desist from the aforesaid violations of the provisions of said Act to regulate commerce," and that "such other and further orders be entered as the Commission may deem necessary in the premises and the complainants' cause may appear to require."

A separate answer was filed by each of the defendants except the Baltimore, Chesapeake & Richmond Steamboat Company, whose answer was included in that of the Southern Railway Company.

The material admissions, denials, and averments of the defend-

dants in response to the several allegations set forth in the complaint, may be summarized as follows:

The Southern Railway Company answering, admits that it is a common carrier engaged in interstate transportation of property by continuous carriage or shipment wholly by rail, but denies that the same is true of the Baltimore, Chesapeake & Richmond Steamboat Company, whose answer is included in that of the Southern Railway. It admits having established rates for the transportation from Baltimore to Piedmont and Anniston of property covered by the Southern Railway & Steamship Association Classification as named, except as to rates from Baltimore to Piedmont, which are higher than those shown in complaint.

It denies that the rates to Piedmont are unreasonable and unjust in comparison with the rates to Anniston, and avers that rates charged from Baltimore and other Eastern Cities are made as the result or sequence of active competition between the Georgia Pacific Railway, the East Tennessee, Virginia & Georgia Railway and the Louisville & Nashville Railroad Company, with their several connections prior to the 1st of August, 1894, when the East Tennessee, Virginia & Georgia road was purchased by the Southern Railway Company; that the rates from Baltimore and other Eastern Cities to Piedmont are higher than from those points to Anniston for the reason that the competition to Piedmont is not such as necessitates as low rates as to Anniston; that Piedmont is reached only by the East & West Railroad and the Southern Railway, and that at no time has the competition from the east to that point, between the East & West road and its own, been as strong and active as between the lines centering at Anniston. It admits "that the rates are greater for the transportation of like kind of property for the shorter distances from New York, Philadelphia, or Baltimore to Piedmont than for the longer distance over the same lines in the same direction from said cities to Anniston;" but it denies that this is a violation of the act to regulate commerce "because the circumstances and conditions are not substantially similar." It further denies that it omits to make and publish schedules and rates for the transportation of property embraced in Classes A, B, C, D, E, F and H from New York, Philadelphia and Baltimore to Piedmont, while it publishes on same classes of freight, schedules of rates from those cities to Anniston.

The answer of the Pennsylvania Railroad Company admits that it carries freight over its line as part of two separate routes to Anniston *via* Piedmont, namely :

1. *Via* the Pennsylvania Railroad, Cumberland Valley Railroad, Norfolk & Western Railroad and the Southern Railway.

2. *Via* the Pennsylvania Railroad, New York, Philadelphia & Norfolk Railroad, Norfolk & Western Railroad and the Southern Railway.

It admits that the rates to the region in question are fixed by the Southern Railway & Steamship Association, and are acquiesced in by that company in so far as the proportions of the rates it is to receive are concerned. It denies that at the time the complaint was filed there were any published rates to its knowledge *via* the route first named to Piedmont, but admits that rates were in effect *via* the second route above referred to. It avers that on March 26, 1895, rates to Piedmont *via* the Cumberland Valley Railroad, Norfolk & Western Railroad and Southern Railway, embracing the same number of classes as are embraced in the rates to Anniston and as fixed by the Association before mentioned, were put into effect. It admits it "receives *via* the route first named the same compensation for the transportation over its railroad of property destined both to Piedmont and Anniston," but avers that it receives over the route last named "less compensation for transportation over its railroad of property destined to Piedmont than it receives on property destined to Anniston, and that such compensation is lawful, just and reasonable."

The Cumberland Valley Railroad Company answering admits that it participates, in connection with the Pennsylvania Railroad and the Norfolk & Western Railroad and connections, in the carriage of property to Piedmont and Anniston; that the tariff containing rates to such locality was prepared by the Southern Railway & Steamship Association and was acquiesced in, in so far as the proportion of the rate it was to receive is concerned, and that it "receives the same compensation for the transportation over its road of property destined both to Piedmont and Anniston," and claims that such compensation is lawful, just and reasonable.

The Baltimore & Ohio Railroad Company answering denies that it is engaged in interstate transportation of property by continuous carriage or shipment wholly by railroad between the

points of shipment and destination over the through line or route mentioned in the petition, to wit : the route or line *via* the Norfolk & Western Railroad and the Western Division of the Southern Railway; and further denies that it has made, established, or published, any rates for transportation of property from Baltimore or elsewhere to Piedmont and Anniston or other points in the State of Alabama *via* such through routes. It states that it has in effect all-rail rates from Baltimore, Philadelphia and New York to Anniston *via* Alexandria and lines formerly included in the system of the Richmond & Danville Railroad Company, now forming part of the system of roads operated by the Southern Railway Company; but denies that it has any water and rail rates between said points; and further denies that it has any rates either all rail or water and rail between said cities of Baltimore, Philadelphia and New York, and Piedmont. It states that the through rates from Baltimore to Anniston *via* Alexandria in which it participates are the same as those stated in the petition as in effect between said points, but denies that it participates in any of the through rates mentioned as charged from Baltimore to Piedmont, or in any other through rates between said points.

The separate answers of the Norfolk & Western Railroad Company and F. J. Kimball and Henry Fink, receivers thereof, are alike in substance and in form. They admit that said road is a carrier wholly by rail between the points mentioned and in the manner alleged in the complaint; that the established rates for the transportation from Baltimore to Anniston are as set forth in the petition, but aver, as did the Southern Railway Company, that the rates from Baltimore to Piedmont are higher than those shown in the complaint. They deny that the rates to Piedmont are unreasonable and unjust in comparison with the rates to Anniston, but aver that the rates are made by the Southern Railway Company and their relation is confined to acquiescence by them in so far as the proportions of the rates they are to receive are concerned. They deny that they omit to make and publish schedules and rates for the transportation of property embraced in Classes A, B, C, D, E, F and H from Baltimore, New York and Philadelphia to Piedmont, while they publish on same classes of freight, rates from those cities to Anniston.

The substance of the complaint in the second case is that the

freight rates from Chattanooga, Tennessee, to Piedmont are on certain classes considerably higher than from Chattanooga to Anniston; that the Southern Railway Company has a line of its own to both points, and the Chattanooga, Rome & Columbus Railroad Company has a route to Anniston in connection with the Southern Railway Company, and one to Piedmont in connection with the East & West Railroad Company; that traffic over the line of the Southern Railway Company, between Chattanooga and Piedmont, is carried over a less distance than traffic from Chattanooga to Anniston, by any existing route between those points; and that defendants have established the following rates for the transportation from Chattanooga to Piedmont and Anniston of property embraced in the several classes of freight set forth in the Southern Railway & Steamship Association Classification:

To PIEDMONT, ALABAMA	IN CENTS PER 100 LBS.												
	CLASSES.												Per bbl.
	1	2	3	4	5	6	A	B	C	D	E	H	F
	52	44	38	34	28	23	23	23	16	16	34	32	33

To ANNISTON, ALABAMA	CLASSES.												
	CLASSES.												
	1	2	3	4	5	6	A	B	C	D	E	H	F
	57	48	43	34	27	22	22	22	12	11	27	32	24

That the above mentioned rates on classes 5, 6, A, B, C, D, E, H and F, are unreasonably and unjustly higher from Chattanooga to Piedmont than from Chattanooga to Anniston, and subject complainant and others doing business at Piedmont and in the surrounding territory, to "unjust discrimination and undue and unreasonable prejudice and disadvantage in favor of, and to the undue preference and advantage of merchants and dealers in and about Anniston;" and that such rates are greater for the transportation "under substantially similar circumstances and conditions of like kind of property, by the defendant, the Southern Railway Company, for the shorter distance from Chattanooga to Piedmont, than for the longer distance over the same line in the same direction, from Chattanooga to Anniston."

The East & West Railroad Company answering states simply that the rates from Chattanooga, Tennessee, to Piedmont are made by continuous mileage tariffs of the Southern Railway

Company for causes which they do not control, and in the making of which rates they necessarily have no voice, but have adopted them as their rates to meet competition.

The answer of the Southern Railway Company admits that rates as named in the petition are specifically correct, except that on class H, from Chattanooga to Anniston, which is incorrectly stated as 32 cents, whereas the correct rate, it avers, is 34 cents. It denies that the rates on classes 5, 6, A, B, C, D, E, H and F, "are unreasonable and unjustly higher from Chattanooga to Piedmont, than from Chattanooga to Anniston." It admits that the rates from Chattanooga to Piedmont, on some classes of freight, are higher for the shorter haul than the rates on the same classes for the longer distance from Chattanooga to Anniston, but denies that the transportation is made under substantially similar circumstances and conditions.

The answer of Eugene E. Jones, receiver of the Chattanooga, Rome & Columbus Railroad Company admits that the rates as alleged in the petition have been established between Chattanooga and Piedmont, and Anniston, but denies that the said line is under any common control or management with either of the other defendants, for the transaction of interstate commerce. It admits that freight can pass from Chattanooga, over its line to Cedartown, Georgia, and thence over the East & West Railroad to Piedmont, and from Chattanooga, over its line to Bremen, Georgia, and thence over one of the lines of the Southern Railway Company to Anniston; but denies that its line is being used in connection with the East & West Railroad Company in the transportation of traffic from Chattanooga to Piedmont, and further denies that it is carrying business to Piedmont under any of the said rates from Chattanooga. It avers that since the month of February, 1894, no business has been transported over its lines bound for Piedmont, and states that it is not, nor has it been, engaged in transporting property to Piedmont, at the rate specified in said complaint, nor in receiving a smaller rate of freight for carrying property to Anniston, than to Piedmont.

#### FACTS.

The following are the facts found in the first-named case:

- (1) The complainant, E. D. McClelen, the Mayor of the City

of Piedmont, Alabama, and Wm. M. Elgin, Jabe C. Faughender, Roberts & Stewart, and J. C. Woolf, the other complainants, are grocers and general merchants, doing business at the said city of Piedmont.

(2) The defendants, the Southern Railway Company; the Pennsylvania Railroad Company; the Cumberland Valley Railroad Company; the Baltimore & Ohio Railroad Company; the Norfolk & Western Railroad Company; and F. J. Kimball and Henry Fink, receivers thereof,—are severally common carriers wholly by rail, under different corporate names, engaged in interstate commerce. But the defendant, the Baltimore, Chesapeake & Richmond Steamboat Company, is not a common carrier “wholly by rail” as alleged in the complaint.

(3) The Baltimore & Ohio Railroad Company at the time the petition was filed had no established or published rates for the transportation of property from Baltimore to Piedmont, Anniston, or any other points in Alabama *via* the through routes named,—to wit: the Norfolk & Western Railroad Company and the Western Division of the Southern Railway,—but did have in effect all-rail rates from New York, Philadelphia and Baltimore to Anniston *via* Alexandria, and lines formerly included in the system of the Richmond & Danville Railroad Company, now part of the system of roads operated by the Southern Railway; that such rates were the same as those alleged in the petition to be in force between said points. That it had no such rates between the said Cities of New York, Philadelphia and Baltimore, to Piedmont as alleged; and did not then, and does not now, participate in any through rates between said points.

(4) Piedmont is a junction point of the Southern Railway and the East & West Railroad, and is on the direct line to Anniston when traffic from either New York, Philadelphia, or Baltimore is routed *via* the Norfolk & Western Railroad and the Southern Railway.

(5) Anniston, Alabama, is a junction point of the Southern Railway and the Louisville & Nashville Railroad.

(6) Anniston is the more distant point, by 15 miles in a south-westerly direction, than Piedmont.

(7) The rates as alleged and in effect when petition was filed, between Baltimore, and Piedmont and Anniston, on traffic routed



*via* the Norfolk & Western Railroad and the Southern Railway and concurred in by all the defendant carriers by rail, excepting the Baltimore & Ohio Railroad Company, were as follows, to wit:

	CLASSES.												Per bbl
	1	2	3	4	5	6	A	B	C	D	E	H	F
All Rail													
To Anniston	119	102	90	76	62	51	39	50	42	41	61	73	83
To Piedmont	137	118	104	88	72	59							
Rail and Water													
To Anniston	107	92	81	68	56	46	34	45	37	36	55	65	73
To Piedmont	125	108	95	80	66	54							

(8) The rates from Baltimore to Piedmont were subsequently increased and in force as averred in the answers of the Southern Railway Company, the Norfolk & Western Railroad Company, and F. J. Kimball and Henry Fink, receivers thereof, which answers, in so far as they relate to such rates, were substantially true at the time said answers were filed, but are not now. The following table shows the present class rates in effect between Baltimore, Maryland, and Anniston and Piedmont:

ALL RAIL.													
<i>Via</i> Pennsylvania R. R.; Cumberland Valley R. R.; Norfolk & Western R. R.; and the Southern Railway.													
From	RATES IN CENTS PER 100 LBS.												per bbl.
	1	2	3	4	5	6	A	B	C	D	E	H	F
Baltimore, Md.,													
To Anniston, Ala.	119	102	90	76	62	51	39	50	42	41	61	73	83
To Piedmont, Ala.	137	118	104	88	72	59	49	59	53	49	73	90	104
SEA AND RAIL.													
To Anniston, Ala.	107	92	81	68	56	46	34	45	37	36	55	65	73
To Piedmont, Ala.	125	108	95	80	66	54	44	54	48	44	67	83	94

(9) The rates *via* defendants' lines above mentioned from New York and Philadelphia were, at the time petition was filed, and are now, similar in their relation to each other, to those set forth in the foregoing tables of rates from Baltimore, to Piedmont and Anniston.

(10) The failure on the part of the defendant carriers to make and publish schedules of rates to Piedmont, covering classes A to H inclusive, as alleged in the complaint, does not exist at the present time, as is shown in the above statement of class rates.

The following are the facts disclosed in the second-named case:

(1) Piedmont, Alabama, is a junction point of the Southern Railway and the East & West Railroad.

(2) Anniston, Alabama, is a junction point of the Southern Railway and the Louisville & Nashville Railroad.

(3) *a.* The defendant, the Southern Railway Company, has a line of its own from Chattanooga, to Piedmont and Anniston, and on shipments from Chattanooga to Piedmont, over the same line in the same direction, the shorter distance to Piedmont is included within the longer to Anniston.

*b.* The Chattanooga, Rome & Columbus Railroad Company has a route to Anniston in connection with the Southern Railway *via* Bremen, Georgia, and to Piedmont in connection with the East & West Railroad *via* Cedartown, Georgia.

(4) The distances from Chattanooga are as follows, to wit:

*To Piedmont:*

*via* Southern Railway, - - - - 127 miles  
*via* Chattanooga, Rome & Columbus Railroad and the East & West Railroad, - - 121 "

*To Anniston:*

*via* Southern Railway, - - - - 142 miles  
*via* Chattanooga, Rome & Columbus Railroad and the Southern Railway, - - - 175 "

(5) The class rates in effect over defendants' lines between Chattanooga, and Piedmont and Anniston at the time petition was filed, were as follows:

	IN CENTS PER 100 LBS.													
	CLASSES.													per bbl.
	1	2	3	4	5	6	A	B	C	D	E	H	F	
TO PIEDMONT	52	44	88	84	28	28	28	28	16	16	84	83	83	
TO ANNISTON	57	48	48	84	27	22	22	22	12	11	27	23	24	

and the present class rates between the same points, as shown by tariffs on file with the Commission, are as follows:

	IN CENTS PER 100 LBS.													
	CLASSES.													per bbl.
	1	2	3	4	5	6	A	B	C	D	E	H	F	
TO PIEDMONT	63	55	50	45	41	29	25	26	23	21	41	45	46	
TO ANNISTON	57	48	48	84	27	22	20	22	12	11	27	26	24	

From testimony applicable to both cases, the following facts appear:

Piedmont merchants encounter active competition from Anniston merchants in territory in the immediate vicinity of Piedmont. The lower rate to Anniston, in the language of a witness,

"draws trade that way." The Piedmont merchant buys his goods in the same markets and at the same prices as the Anniston merchant, but the lower rates to Anniston enable the Anniston merchant either to undersell the Piedmont merchant or to realize a greater profit at the same price. In territory equi-distant from Piedmont and Anniston, the former does considerable business. Between this equi-distant territory, however, and Anniston, a mountain intervenes. The mountain is to the disadvantage of Anniston, and to some extent neutralizes the disadvantage in rates to which Piedmont is subjected. Whenever the Piedmont merchant can sell at all in competition with the Anniston merchant, it is at a less profit because of the higher rates to Piedmont.

#### CONCLUSIONS.

There is no charge in either complaint that the rates in question to Piedmont are excessive, or are unreasonable in themselves, but the complaint in substance is that they are unreasonable and unjust *as compared with the rates to Anniston*, in that they give the latter city an undue preference or advantage, and subject the former to an undue prejudice or disadvantage in territory in which they meet in active competition. The exaction, without lawful excuse, of a greater compensation in the aggregate for the shorter than for the longer haul over the same line in the same direction, the shorter being included in the longer, which is forbidden by § 4 of the act to regulate commerce, is only a form of unjust discrimination or undue preference, to which, it seems, Congress desired to call particular attention because of its prevalence in certain sections of the country. Both complaints allege violations of this provision of the law; and the proof, so far as rates are concerned, relates to this species of discrimination. The proof is positive, and is not denied, that the defendants in the rates complained of make the greater charge in the aggregate for the longer haul over the same line through Piedmont to Anniston, and that this discrimination results in injury to Piedmont merchants, and in giving Anniston merchants the advantage in territory where they meet in competition.

The defendants claim that the greater charges for the shorter distances to Piedmont, as shown in these cases, are justified by the competition of another railroad carrier subject to the Act to regu-

late commerce. Under the construction by the Commission of the 4th section, or "long and short haul clause," of the statute, in its former rulings, this claim cannot be admitted except upon application to the Commission for exemption from the rule, because the competition under which the defendants would justify the lower rates to Anniston, the longer haul, than to Piedmont, the shorter haul, arises with a competitor, the Louisville & Nashville Railroad Company, which is an interstate carrier by rail and amenable to the Act to regulate commerce. The elements of competition and all matters relative thereto may be presented to the Commission for determination upon application of defendants for relief from the operation of the 4th section of the Act, under the proviso to said Act. The decision herein is in no wise to be construed to preclude the defendants from making such application under the provisions of the Act.

For the reasons hereinabove set forth, the higher rates in force and charged by the defendants on traffic to Piedmont than are in force and charged on like kinds of traffic to Anniston are declared unlawful, and it is directed that an order be issued to the defendant carriers participating in these rates requiring them to desist from making and enforcing or receiving any higher rates for transportation as aforesaid to Piedmont, than are, or may be, made, or accepted by them for the transportation of like kinds of traffic to Anniston.

JEROME HILL COTTON COMPANY, *Complainant*, V.  
THE MISSOURI, KANSAS, & TEXAS RAILWAY  
COMPANY, *Defendant*.

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Complaint and Supplemental Complaint Filed October 23, 1894.  
—Answer Filed November 30, 1894.—Heard at St. Louis,  
Missouri, April 18, 19, 1895.—Decided May 30, 1896.

1. A higher charge for a shorter than for a longer distance is sought to be justified by the existence of a compress at the longer distance point where cotton may be compressed and shipped thence to destination at less expense than cotton from the shorter distance can be hauled to the longer distance point, there compressed, and hauled to destination, or, as is claimed, at less cost than it can be hauled to destination directly without compressing. The rate sheet in such case fixes a rate of charges from the shorter and longer distance points on flat or uncompressed cotton only, "with option of compression *en route*." In some cases the carrier avails itself of this option and has the shorter distance cotton compressed, hauling it to the longer distance point for that purpose; at other times it is carried directly to destination without compressing, the charge to the shipper being the same in either case. *Held*, That when under this option system of rate-making the carrier causes cotton to be compressed at its own cost and for its own benefit, any dissimilarity of circumstances resulting therefrom is of the carrier's own making, and does not take the traffic out of the general rule of the statute which forbids a greater charge for a shorter distance.
2. Where a carrier charges 70 and 80 cents per 100 lbs. on cotton from Indian territory points to St. Louis, and 75 cents for distances 400 to 600 miles longer, and had long had in force rates of 60 and 65 cents per 100 lbs. from these Indian territory points when it did not reach St. Louis over its own line, and at a time when the value of cotton was much higher, and its transportation more expensive than now; when it had made considerable reductions in its rates and charges generally, and upon 99 per cent or practically all its cotton rates except those in dispute; and when its rate on other freight, hauled and handled at greater expense, is much less than cotton rates; and where other roads in the same territory for like rates have much longer hauls,—*Held*, That such charges of 70 and 80 cents are unreasonable, and to be reasonable should not exceed 60 and 65 cents per 100 lbs.

3. The financial necessities and conditions of the carrier should be considered and given proper weight in fixing rates, but are not controlling to the extent that independent of other circumstances any rates are reasonable until the earnings are sufficient to operate the road and meet all the obligations of the company. The stated obligations of the carriers between St. Louis and Texas, and St. Louis and the Indian territory, to be met by earnings, are eight times as great on some as upon others, varying from less than \$18,000 to more than \$108,000 per mile; and to adjust reasonable rates on the basis of the bonds and stocks issued is impracticable.

[No. 395.]

*Harvey & Hill* and *Charles Cummings Collins* for complainant.

*James Hagerman* for the Missouri, Kansas & Texas Railway Company, defendant.

#### REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner*:

The matters complained of in this proceeding are presented in a complaint and a supplement by way of amendment thereto, which were filed together.

The material part of the complaint states that in October, 1894, the Missouri, Kansas & Texas Railway Company received at South Canadian and Eufaula, Indian territory, for shipment to St. Louis, Missouri, 144 bales of cotton, estimated to weigh in the aggregate 75,500 lbs., upon which the transportation charges were \$604,—80 cents on the 100 lbs., which rates and charges the complainant alleges to be unjust and unreasonable; the defendant unlawfully charges and receives greater compensation in the aggregate for the transportation of cotton to St. Louis for shorter distances from Eufaula and other stations on defendant's line in the Indian territory, than for the longer distance from Denison, Texas, to St. Louis, Missouri, the shorter being included within the longer distance and over the same line, in the same direction;

that defendant hauls cotton without permission of the shipper from said points in the Indian territory to Denison for compressing at a compress in which defendant is interested, and that defendant claims the right to haul cotton at discriminating rates to what it designates as concentrating points, Denison being such a point, to which it hauls cotton at 25 cents per bale, a distance of 110 miles; that the discriminations of defendant are having a destructive effect on the cotton business of St. Louis and on the complainant's business; that defendant gives rebates in the interest of interior compresses and interior buyers along its line; that its tariffs favor the foreigner by giving lower relative rates to European consumers; that the St. Louis rate is extortionate and the prices of commodities should be considered in making the rate; that the rate to St. Louis is \$1 per bale from said points more than it was four years ago when cotton was worth \$50 and now it is worth only about \$25 per bale; that the rate on cotton to New York from St. Louis is 46½ cents which includes 12½ cents for compressing, and 4 cents charges for crossing the Mississippi river, while the distance from St. Louis to New York is twice the distance from Eufaula to St. Louis; that the rate on cotton from St. Louis to Liverpool is 67 cents; that defendant hauls cotton bagging and ties from St. Louis to Eufaula and other points in Indian territory for 50 cents per 100 lbs.; that deeming it unreasonable, complainant refused to pay the said charge of 80 cents on cotton, and tendered 50 cents on 100 pounds, and asks for an order on defendant to cease and desist from said violations of the Act to regulate commerce, and requiring said defendant to accept the reasonable rate so tendered on the 144 bales, or such rate as the Commission might deem reasonable; also requiring defendant to accept a reasonable rate on all cotton hauled after the filing of the petition, October 23, 1894, until the decision of the case.

In the supplement or amendment the complainant further states: "That on the 18th day of October, A. D. 1894, the said defendant company notified the complainant that defendant had received a large consignment of cotton for said complainant, a description of which is hereinafter given, and that the defendant would hold the same until the complainant had paid the freight on said consignment as charged by the bills of said defendant,

hereinafter filed, and the freight on the one hundred and forty-four (144) bales as enumerated and described in the original foregoing and accompanying petition," whereupon the complainant, though regarding the same as unreasonable and unjust, paid defendant's charges under protest on the 19th day of October, 1894; that the shipments or consignment of cotton so received in addition to the 144 bales above mentioned consisted of 17 bales, estimated weight 9,516 lbs., freight \$76.12, from Stringtown, 72 bales from South Canadian, estimated weight 38,000 lbs., freight \$304, upon which shipments the charges were 80 cents per 100 lbs., and 41 bales from Wagoner, estimated weight 20,500 lbs., at the rate of 70 cents per 100 lbs., aggregate \$143.50; that said cotton was never weighed, and the charges were based on the estimated weight of 535 lbs. per bale, except as to the 41 bales shipped from Wagoner, estimated at 500 lbs. per bale. Complainant thereupon asks that the freight rates of the defendant may be revised and readjusted to a reasonable basis by this Commission, that defendant shall be required to refund to complainant the charges in excess of a reasonable rate, including what shall be paid up to the time of the decision of this case on shipments over defendant's road from the Indian territory to the complainant, and asks that exhibits to the supplemental and original petition may be considered as part of the complaint.

The defendant, answering, denies every allegation contained in the complaint except those specifically admitted. It admits shipments aggregating 144 bales from points in Indian territory, as stated in the complaint, but claims that on the shipment of 44 bales from South Canadian, the estimated weight was 500 lbs. per bale when it should have been 535 lbs.; admits that the cotton was not weighed; and avers that complainant was advised of defendant's desire to collect only for actual weight, and was willing to refund excess; that complainant never claimed weights were excessive, and recites provision in its, defendant's, rate sheets giving notice that charges would be made on estimated weight; denies that complainant was charged anything for compressing; admits that defendant was not directed by shipper or consignee to compress the cotton, but avers it did this, under the right reserved in its tariff, at Denison where nearest compress was located; that while its tariffs reserve the right of compressing



cotton consigned to it, it does not, as a rule, compress cotton consigned to St. Louis locally, but where tendered for shipment to eastern points it is compelled to compress at Denison or St. Louis, owing to the fact that trunk lines east of the Mississippi and steamship lines do not accept for transportation flat or uncompressed cotton; avers that during period of cotton movement north-bound loads exceed south-bound loads, and it is economic to compress; that 34-ft. box cars carry 50 bales, or 26,750 lbs., compressed, or 25 bales, or 13,375 lbs., flat or uncompressed, the loading capacity of the car being 60,000 lbs.; that cotton is carried to Denison for compressing on account of these economic reasons; it denies that its charge of 80 cents from South Canadian and Indian territory points is unreasonable; admits it refused 50 cents per 100 lbs. tendered, which it alleges was too low, and was in violation of its published tariff; its tariff authorized, and no request or direction given was against compression at the time of shipment; denies that it had any interest in compress at Denison or at any other point on its line, but avers that the complainant is interested in a St. Louis compress; alleges that Jerome Hill, vice president of complaining company, seeks to force the adjustment of rates which will force cotton to St. Louis for compressing, to the disadvantage of producers by increasing charges on cotton to the disadvantage of the carrier; denies that its rate from Eufaula to Denison is 25 cents per bale, but avers that it is 42 cents, and 40 cents from South Canadian per 100 lbs.; denies that said rates are a discrimination against complainant, or that it, the defendant, claims or ever claimed the right to haul cotton at discriminating rates to concentrating or any other points; admits that its rates from Denison are 75 cents, while from Eufaula and shorter distance points in the Indian territory, with privilege of compressing, is 80 cents; avers that higher rates are necessary from points north of Denison because cotton has to be transported to Denison for compressing and denies that such higher rates are in violation of the 4th section or other provision of the Act; denies that its rates are unjust, or extortionate, or discriminating, or operate in any way to the disadvantage of St. Louis; denies that the price of a commodity should regulate the charge, but avers that value of service should be the measure of the rate; admits that in 1890 rates were 60 cents per 100 lbs.

from Eufaula and points in Indian territory, and 80 cents from Denison; avers the service rendered in transportation from points in Indian territory being greater, it was necessary to advance the rate; admits that rate on cotton bagging and on ties from St. Louis to South Canadian and Indian territory points is 50 cents per 100 lbs.; avers that the value of bagging is 3 cents and ties 1 cent, while cotton is worth 5 cents per lb.; denies that it favors foreigners or unduly favors any place, locality, or shipper; denies that it makes any rate to concentrate cotton; admits rate from St. Louis to Liverpool is 67 cents and from St. Louis to New York 46½ cents.—12½ for compressing and 4 cents to cross the Mississippi, leaving 30 cents for haul east of St. Louis; insists, however, that circumstances of the haul to and from St. Louis are dissimilar and afford no comparison; avers that line of defendant is 251 miles through Indian territory, and was built when cost of construction was high; that territory traversed by this line is not open to settlement, and traffic to and from points on the line in the Indian territory insignificant; that production of cotton is less than 15,000 bales, and traffic consists principally of interstate traffic to and from Texas, while eastern lines handle enormous traffic; and in Indian territory no protection afforded from banditti.

The case was heard at St. Louis, Missouri, where the parties appeared and were represented by counsel. On investigation the facts are ascertained to be:

1. The Jerome Hill Cotton Company, complainant, is a Missouri corporation, having its principal office at St. Louis, Missouri, where it buys, sells, receives, and pays charges on cotton shipped and consigned to it and does business as a cotton factor.

2. The Missouri, Kansas & Texas Railway Company, defendant, is a common carrier, with lines extending from St. Louis, and Hannibal, Missouri, and Junction City, Kansas, to and through Parsons, Kansas, thence through the Indian territory to the Texas border. Thence lines of its system extend to Denison, and thence to Houston, Texas, with several branch lines. The main line of the system is the line from St. Louis to Houston, and the system has a joint track, or track arrangements thence to Galveston. The entire mileage operated is 2,060.79 miles.

3. The distances by defendant's line and by the short line, and

the rates on cotton to St. Louis from Denison, Texas, and from stations in the Indian territory named in the complaint, are :

FROM—	Deft's Line.	Short Line.	Rate 100 lbs.
	<i>Miles.</i>	<i>Miles.</i>	<i>Cents.</i>
Denison, Texas.....	658	583	75
Stringtown, Ind. Ter.....	599	523	80
South Canadian, Ind. Ter.....	544	468	80
Eufaula, Ind. Ter.....	585	450	80
Wagoner, Ind. Ter.....	485	409	70

The shortest line or route to St. Louis is over defendant's road from Denison and other points named to Vinita, thence over the St. Louis & San Francisco road to St. Louis. Before the completion of the defendant's Missouri, Kansas & Eastern line in 1893 from Franklin Junction to Texas Junction the defendant's business from the Indian territory and points south of the Missouri river reached St. Louis by a haul of 119 to 200 miles over the lines of other companies under joint tariffs.

4. The rate of 80 cents to St. Louis on the hundred pounds of cotton is in force from Blackstone and from Warner, 160 miles apart, and from all intermediate stations on defendant's line in the Indian territory. Warner is 655 and Blackstone 495 miles from St. Louis, and the average distance between St. Louis and the points from which this 80-cent rate prevails is over the defendant's line 525 miles; over the short line 449 miles.

5. From Wagoner to St. Louis there is a route by rail over the line of the Missouri Pacific System to Van Buren, Arkansas, thence over the St. Louis & San Francisco Railway to St. Louis, the distance being the same as over the defendant's line, 485 miles; and another route over lines of the Missouri Pacific System through Coffeyville, Kansas, and Nevada, Missouri, the distance being 506 miles.

From South Canadian and all points further south on defendant's line the route to St. Louis over defendant's line to South McAllister, thence over the line of the Choctaw, Oklahoma & Gulf Railroad to Wister, thence by the St. Louis and San Francisco to St. Louis is shorter than the through route by defendant's line. The distance by this route from South McAllister

to St. Louis is 45 miles less than over defendant's line to St. Louis.

6. Cotton is carried over defendant's and other lines from Texas points north to St. Louis and south to Galveston and New Orleans, for rates and distances as follows:

To  FROM	New Orleans, La.			St. Louis, Mo.		
	Mileage via M. K. & T.	Shortest Line Distance	Rate.	Mileage via M. K. & T.	Shortest Route Distance	Rate.
Denison.....	784	538	75	658	533	75
Fort Worth.....	688	545	75	754	705	75
Dallas.....	699	513	75	764	633	75
Waco.....	599	547	75	864	748	75
Houston.....	-----	361	28	1103	819	75

The local or Texas State Commission rate from Denison to Galveston, 485 miles by defendant's line and 388 miles by the short line, is 65 cents on the 100 pounds.

7. The defendant's cotton rate to Galveston from Stringtown and all points north of Caney in the Indian territory, distances of 534 to 700 miles, is 96 cents, while from points in the Indian territory on the Chicago, Rock Island, & Pacific road defendant is party to a joint tariff to Galveston for distances of 550 miles at 65 cents, and from its station in Oklahoma territory distant 628 miles from Galveston, of 75 cents.

8. The rate on cotton from St. Louis to New York, a distance of 1,065 miles, is 46½ cents, which includes 4 cents transfer across the Mississippi river to compress and 12½ cents for compressing, leaving net rate of 30 cents per 100 pounds. From St. Louis to Liverpool the rate is 67 cents.

9. Rates to St. Louis from cotton states east of the Mississippi river are lower on cotton than from the states west. The rates of the Mobile & Ohio Railroad from all points on its line between Rutherford, Tennessee, a distance of 218 miles, and Alabama state line, in Mississippi, a distance of 550 miles from St. Louis, is 45 cents per 100 lbs.

10. The rates generally on defendant's road have been gradually declining for years. On a large part—one of defendant's witnesses said on 99 per cent—of cotton carried by defendant, there was a reduction last year.

The advance on cotton applied only on a small proportion.

11. The following table gives the cotton rates from Wagoner, Eufaula, South Canadian and Stringtown, stations north of Denison on respondent's road in Indian territory, which have been in force from time to time during the period from May 12, 1889, to the present time:

RATES EFFECTIVE.

To St. Louis from	May 12, 1889.	Sept. 12, 1890.	Nov. 6, 1891.	Jan. 20, 1892.	Oct. 31, 1892.	Nov. 23, 1892.	Sept. 11, 1894.
	Per bale.	Cents 100 lbs.	Cents 100 lbs.	Cents 100 lbs.	Cents 100 lbs.	Cents 100 lbs.	Cents 100 lbs.
Wagoner ----	\$3 00	60	55	65	70	70	70
Eufaula.....	3 00	60	60	65	80	70	80
South							
Canadian....	3 00	60	60	65	80	70	80
Stringtown ..	3 25	65	60	65	80	75	80

Rates from Denison, Texas, in force from time to time since 1890 to St. Louis, were as follows:

From Denison to St. Louis.	Sept. 10, 1890.	Oct. 16, 1891.	Oct. 3, 1892.	Oct. 31, 1892.	Sept. 1, 1894.
	Cents 100 lbs.	Cents 100 lbs.	Cents 100 lbs.	Cents 100 lbs.	Cents 100 lbs.
	75	65	70	80	75

The defendant by tariff effective January 1, 1893, limited to one year unless sooner revoked, the same being a reissue of tariff previously existing, published a rate of 25 cents per bale, applying on cotton concentrated at Denison and Sherman, Texas, from all stations on the Missouri, Kansas & Texas Railway in the Indian territory "on shipments of cotton concentrated by regular cotton shippers and which are to be reshipped over this line and does not apply on shipments consigned to merchants or others for town delivery."

And by a tariff effective November 18, 1893, "applying on cotton concentrated at Denison, Texas, from stations on the M. K. & T. in the Indian territory," defendant published a rate of 23 cents per bale with same limitations and conditions.

The local rate now on cotton from Eufaula to Denison, 114 miles, is 42 cents. The average haul to Denison compress from Indian territory points is about 75 miles.

By schedule No. 614, effective October 7, 1891, the defendant published a through rate to New York of \$1 from all points south of Russell creek and north of Stringtown, and \$1.05 from Stringtown and all points south of Caney in Indian territory, and indicated that the rate of \$1 was so divided that defendant received 60 cents for the haul to St. Louis, and of the \$1.05 rate defendant received 65 cents for the haul to St. Louis. In both cases 10 cents was charged for compression and 30 cents for the haul east of St. Louis.

This tariff was a reissue of schedule No. 50, January 1, 1891. Defendant's supplement No. 1 to above schedule No. 614, effective October 27, 1891, reduced New York rates from all Indian territory points to 95 cents and indicated its own share for the haul to St. Louis, 55 cents, the balance going, 10 cents for compressing and 30 cents for the haul east.

By its tariff effective January 1, 1892, "applying on cotton to be forwarded to Denison to be compressed and reshipped over this line," it reissues its rate of 95 cents for the through haul to New York, indicating divisions as before.

12. As far back as 1889 the cotton rate from all points in the Indian territory on the Gulf, Colorado, & Santa Fé Railway to St. Louis was 80 cents per 100 lbs. From such points then (the road not be completed further north than Purcell), the route to St. Louis was circuitous, running south into Texas, thence over other lines to St. Louis.

The same rate of 80 cents to St. Louis is now maintained from all points on this road in the Indian territory, the distance being from 645 to 745 miles.

From Sapulpa, the terminus, and from other points west of Vinita in the Indian territory on the St. Louis & San Francisco Railway, the rate was 80 cents until recently when it was reduced to 75 cents, which is the rate to St. Louis from the most distant

station on the main line of this road in the Indian territory, the distance being 560 miles.

From all points in the Indian territory on the Chicago, Rock Island, & Pacific Railway from Minco, 645 miles, to the Texas border, 100 miles further, the rate to St. Louis is 75 cents.

The capacity or load of the ordinary box car (34 feet), is about 25 bales of uncompressed cotton, and about 50 bales compressed. Defendant's rate on cattle from Denison is 39 cents; from Eufaula, South Canadian and Stringtown it is  $32\frac{1}{2}$ ,  $36\frac{1}{2}$ , and 37 cents, an average of about  $35\frac{1}{8}$  cents per 100 lbs., as compared with 80 cents on cotton. This rate on a standard car (34 feet), 20,500 lbs. cattle, is \$72.43, as compared with \$107 on an average carload of cotton uncompressed, 13,375 lbs., or \$100 on a carload of 12,500 lbs., or \$214 on a carload compressed of 26,750 lbs.

At the rate of 60 cents, in force before the increase to 65 cents in 1892, the earnings on the carload of uncompressed cotton, weighing only 12,500 lbs., would be \$75 as compared with the \$72.43 earnings at the present average rate of  $35\frac{1}{8}$  cents on cattle. In the transportation of cattle there is stoppage for feeding and rest and free carriage for one attendant to the car. The average rates on hay to St. Louis from Eufaula, South Canadian and Stringtown is 32 cents, or \$60.80 on a standard carload.

Defendant's rate on cotton bagging and ties from St. Louis to said Indian territory points is 50 cents per 100 lbs.

13. The rules governing the defendant company in making rates and the test of reasonableness of rates is stated in the testimony of the vice president and manager of the company, as follows:

"The two rules that guide one are to give the largest revenue the traffic will bear, and the other to find a market for the stuff. Of course, if we do not do that, we cannot do the business. Those are the things that guide us. From that standpoint any rate is reasonable under which traffic will move absolutely. It all moves out every season. If it moves out it must be a reasonable rate."

The testimony of the traffic manager of the company is to the effect that reasonable rates must yield earnings sufficient to meet

the expenses of operating the road, pay interest on the bonded indebtedness, taxes, and render a fair dividend to the owners of the stock.

The relations between the rates of the defendant company and rival carriers of cotton from the Indian territory was stated in the testimony of the assistant general freight agent of the company, as follows: "I know the Iron Mountain rates are made on the same basis as ours to keep from invading each other's territory."

14. The foregoing cotton rates are the rates on flat or uncompressed cotton.

The defendant has not established and does not maintain any rates on compressed cotton. In respect to the carrier's option to compress *en route*, its rate sheet contains the following:

"Joint through freight tariff applying on

COTTON.

(Carrier's option of compressing *en route*)."

In its answer defendant states that "while its tariffs reserve the right to it of compression at the rates provided therein, it does not, as a rule, unless scarce of cars, compress cotton consigned to St. Louis locally."

The general rule in respect to compressing is to compress it at the first compress in the direction it is moving whenever practicable.

There is no compress on defendant's line between Indian territory points of shipment and St. Louis.

After defendant had delivered compressed part of the cotton mentioned in the complaint, the complainant objected, and other shipments were delivered uncompressed.

15. The defendant's tariff sheet of cotton rates from Indian territory in respect to weights contains the following:

"Weights.—As the rates shown above are in cents per 100 lbs. the *actual gross weight* must be ascertained from shippers or public weigher, and charges made in accordance therewith, observing, however, a *minimum weight of 500 lbs. per bale*. If actual weight cannot be ascertained, an estimated weight of 535 lbs. per bale will be used in billing, except from stations Wagoner



and North (when destined to Mississippi river points) where an estimated weight of 500 lbs. per bale will be used.

Any overcharge that may arise will be refunded on presentation of certified copy of invoice or certificate of public weigher."

The average weight of cotton per bale shipped to and received at St. Louis is about 500 lbs. Of the shipments mentioned in the complaint, except those from Wagoner, the estimated weight was from 500 to 559 lbs., and the average weight on which complainant paid charges was 528 lbs.

16. The highest, lowest, and average prices of middling cotton in St. Louis, with average value per bale of 500 lbs. for years named—the cotton year commencing September 1 and ending August 31, were as follows:

YEARS.	1888-9	1889-90	1890-91	1891-2	1892-3	1893-4	1894 to Ap. 10, '95
Highest price -----	11	11 $\frac{7}{8}$	10 $\frac{1}{2}$	8 $\frac{1}{2}$	10	7 $\frac{7}{8}$	6 $\frac{5}{8}$
Lowest " -----	9 $\frac{1}{2}$	9 $\frac{1}{2}$	7 $\frac{3}{8}$	6 $\frac{5}{8}$	7	6 $\frac{5}{8}$	5 $\frac{1}{8}$
Average " -----	10 $\frac{1}{2}$	10 $\frac{1}{2}$	9 $\frac{3}{8}$	7 $\frac{1}{2}$	8 $\frac{1}{2}$	7 $\frac{3}{8}$	6 $\frac{1}{2}$
Average value per bale -----	\$50.62	53.75	46.87	39.40	42.50	36.89	30.95

17. The receipts of net cotton (cotton locally consigned to St. Louis, flat or uncompressed) have fallen off since 1892. The reports of the St. Louis Merchants' Exchange show such receipts compressed at St. Louis and East St. Louis to be for the years ending August 31:

1889.....	270,848 bales.
1890.....	231,288 bales.
1891.....	309,273 bales.
1892.....	310,344 bales.
1893.....	177,834 bales.
1894.....	168,571 bales.

This apparent decline coupled with a large increase in the gross receipts at St. Louis is in part accounted for by the claim that a considerable quantity of the so-called through cotton is actually handled and sold by St. Louis factors on through bills to secure such advantage as may result from lower through rates.

The gross receipts for the seasons named were as follows:

1888-'89.....	584,572 bales.
1889-'90.....	538,910 bales.
1890-'91.....	706,469 bales.
1891-'92.....	723,628 bales.
1892-'93.....	474,024 bales.
1893-'94.....	625,421 bales.

Of this cotton Arkansas and Texas furnished by far the most important proportions, aggregating in the last-named year more than a quarter million bales each, while the states east of the Mississippi responding to the comparatively low rates which prevail from that section, show considerable increase in cotton shipments to this point.

18. The physical condition of the road and financial condition of the company has very materially improved since 1891. Tonnage increased every year except last year, 1894, and net earnings last year were greater than the previous year. The volume of business increased in the aggregate and per mile, and the cost of carrying a ton 1 mile has decreased.

The maximum train load from Denison north through the Indian territory and to Parsons, Kansas, increased from 20 cars three years ago to 35 now. The train load thence to Sedalia is 22 cars; Sedalia to Booneville 17 cars; thence to St. Louis 40 cars. The road can carry 1,000 tons now, April, 1895, as against 550 tons three years ago. Defendant's road was an inexpensive road to build, especially through the Indian territory, but the road was built when the cost was higher than now.

Traffic originating in the Indian territory is light comparatively, but the cotton traffic is increasing, and all traffic over the road to and from the state of Texas is carried through the Indian territory.

19. The defendant pays 4 per cent on its first, and 2 per cent on its second, mortgage bonds; it pays no dividends. The liabilities and financial condition of the company, as reported to the Commission, is shown in the following table:

Mileage owned.....	1,646.49 miles		
Aggregate bonded debt.....	\$65,855,000.....	per mile.....	\$39,694
Capital stock.....	68,012,500.....	" "	38,271
Current liabilities.....	2,635,434.....	" "	6,583
An aggregate average of.....			79,547

Upon the St. Louis & San Francisco Railway the like aggregate obligations are \$71,606 per mile, the Chicago, Rock Island, & Pacific Railway \$36,483, the Atchison, Topeka, & Santa Fé Railroad \$50,280, the St. Louis, Iron Mountain, & Southern Railway \$52,844, the Gulf, Colorado, & Santa Fé Railway \$12,961, and the Missouri Pacific Railway \$103,718, as appears from the reports of these companies respectively.

20. COTTON SHIPPED OVER DEFENDANT'S ROAD AND CHARGES PAID THEREON BY THE COMPLAINANT.

1894.	Shipping Point.	Bales.	Total Weight.	Weight Per Bale.	Freight Charges.
Oct. 6...	South Canadian .....	24	12,000	500	\$96.00
Oct. 6...	South Canadian .....	20	10,000	500	80.00
Oct. 7...	Eufaula .....	24	12,840	535	102.72
Oct. 7...	Eufaula .....	24	12,840	535	102.72
Oct. 8...	Eufaula .....	17	9,095	535	72.76
Oct. 8...	Eufaula .....	11	5,885	535	47.06
Oct. 7...	Eufaula .....	24	12,840	535	102.72
Oct. 18...	Stringtown .....	17	9,516	559.76	76.12
Oct. 11...	South Canadian .....	2	1,000	500	8.00
Oct. 18...	South Canadian .....	20	10,000	500	80.00
Oct. 18...	South Canadian .....	24	12,000	541.2	104.00
Oct. 18...	South Canadian .....	28	12,500	543.47	100.00
Oct. 18...	South Canadian .....	8	1,500	500	12.00
Total bales at 80 cents .....		233	123,016	528	984.12
Oct. 11...	Wagoner .....	8	4,000	500	28.00
Oct. 14...	Wagoner .....	16	8,000	500	56.00
Oct. 18...	Wagoner .....	17	8,500	500	59.50
Total bales at 70 cents .....		41	20,500	500	143.50

CONCLUSIONS.

In March, 1893, and several years previous thereto, the defendant railway company owned a cotton compress located on its right of way at Denison, Texas, to which it carried from points on its line in the Indian territory, for 25 cents per bale, "cotton concentrated by regular cotton shippers to be reshipped over its line," while it charged as much as 42 cents per 100 lbs. for like trans-

portation service rendered to merchants and others receiving cotton at Denison, not to be so reshipped. Defendant's compress was destroyed by fire in March, 1893, but this system of unequal charges on cotton was continued by defendant until as late as November, 1893, when its rate on cotton so concentrated at Denison was reduced from 25 to 23 cents per bale. This concentrating system at special low rates afforded cotton buyers and dealers at Denison advantages over those at St. Louis, and operated to the disadvantage of St. Louis as a cotton market.

The practice of so concentrating cotton at Denison through discriminations and special charges was discontinued by defendant in December, 1893, and since then it has not carried, and does not carry, cotton from the Indian territory points on its line to Denison at other than its established local rates, open to all alike, or for "compressing *en route*" at established rates under the carrier's option, reserved in its rate sheet; and the discriminations complained of resulting from the practice of concentrating cotton at special rates are no longer made.

The charges from Eufaula and other stations in the Indian territory south of Wagoner on defendant's line, though made in cents per 100 lbs., in accordance with a provision of defendant's rate sheet, are based on an estimated weight of 535 lbs. per bale. From Wagoner and stations further north the defendant carries cotton, estimating the weight of the bale at 500 lbs. It is not claimed that this difference in estimated weight is based upon any actual difference, and no explanation is made of this practice of assuming a difference where none is shown to exist. The defendant assumes justification of these estimates in the provision of its rate sheet, that: "Any overcharge that may arise will be refunded on presentation of certified copy of invoice or certificate of public weigher."

In respect to this subject of estimated weights and resulting overcharges this Commission has said, in the case of *Phelps & Co. v. Texas & P. R. Co.* 6 I. C. C. Rep. 36, 4 Inters. Com. Rep. 363: "We do not think that a plan of billing cotton at a proper estimated weight per bale should be deemed unlawful when actual weights cannot be ascertained without great inconvenience to the shipper or carrier, and when charges are promptly adjusted by the carrier upon the basis of actual weights furnished

by the consignee. But complainants vehemently assert that they encounter great difficulty in securing the return of overcharges collected by defendant, and if this is true as a rule, the defendant should immediately alter its practice in this regard. Delays in the settlement of overcharges have become a common source of complaint from all sections of the country, and a large portion of the correspondence of this Commission has reference to the adjustment, in an informal way, of claims of this character. It is our experience that these delays are mainly caused through the failure of railway officials to promptly dispose of such claims by either ascertaining which carrier is responsible for the excess or demonstrating to the claimant that no overcharge has been made. Many of these officials do not appreciate the full force of the fact that the retention of an overcharge has all the effect of unjust discrimination against the person from whom payment has been required, and when the refund of an excessive charge has been unnecessarily delayed for a considerable period, that the officials responsible therefor become fairly chargeable with wilful intention to violate the law."

Witnesses experienced in the St. Louis cotton business give the average weight per bale of cotton received at St. Louis as 500 lbs. Official statistics state the average for the United States at less than 500 lbs. for years previous to 1895. The St. Louis Merchants' Exchange for the year 1894-5 report the average weight at 508 lbs. and for other years something less than 500 lbs. The complainants paid for an average weight of 528 lbs. on all shipments from stations south of Wagoner, ranging from 500 to 559 lbs. The carrier by weight has no right to collect for more pounds than it carries. Weight can be conveniently ascertained at St. Louis. The failure to obtain exact weights, being for the convenience and advantage of the carrier, estimated weights should be below, rather than above, actual weights. The fact that the defendant meets with competition at Wagoner for St. Louis business may be the cause of more favorable estimated weights on shipments from that place than are accorded to less favored stations farther south not reached by any competing road. However this may be, in our view of this case there is no justification, where actual weights are not obtained, in estimating the bale of Eufaula, South Canadian, or Stringtown cotton deliv-

ered at St. Louis at more than 500 lbs. as Wagoner cotton is estimated.

The petition for a reduction of the cotton rates and charges in dispute is not based upon over-weights. It does not appear that the cotton was weighed or actual weights ascertained. No claim is made for reparation on account of alleged over-weight, and no order will be made in respect thereto, but the defendant is expected to bring its system into conformity with what is here said and with its practice in respect to shipments from Wagoner.

To justify its higher charges for shorter distances from the Indian territory than for the longer distance from Denison the defendant urges the existence of a compress at Denison, where cotton may be compressed and shipped thence to St. Louis at less expense than cotton from the Indian territory can be hauled south to Denison, there compressed and hauled thence north to St. Louis, or at less cost than Indian territory cotton can be hauled to St. Louis directly without compressing. The defendant has no tariff of rates on compressed cotton. Its rate sheet establishes a rate of charges both from Denison and from the Indian territory on flat or uncompressed cotton with "option of compression *en route*." In some instances the carrier avails itself of this option and has the cotton compressed, hauling it to Denison for that purpose. At other times the cotton is carried directly to St. Louis without compressing, the charge to the shipper being the same in either case. Whatever may be said of this option system of rate making, whenever under it the carrier causes cotton to be compressed, it is done at its cost and for its own benefit, and any dissimilarity of circumstances resulting therefrom is of the carrier's own creation and does not take the traffic out of the general rule of the statute. Shippers are entitled to suitable facilities for shipping cotton compressed or uncompressed, paying reasonable rates therefor. The defendant should establish such reasonable rates on each, and it will be required to cease charging higher rates on cotton to St. Louis for shorter distances for Eufaula, South Canadian, and Stringtown than for the longer distance from Denison.

Cotton is carried to the northeastern seaboard and foreign markets from interior Texas through Galveston and New Orleans as well as by way of St. Louis, and the rates over either route must

be to some extent dependent upon the rates over the other. Cotton from Texas and from the Indian territory is carried to some extent both to the St. Louis and to the Galveston, and also to the New Orleans markets, and the competition between these markets affects the rates of transportation from common sources of supply. From points in central and southern Texas, including Waco and Houston, the rates to St. Louis over the lines of the defendant's system are the same as from Denison—75 cents. The higher rate of 80 cents to St. Louis is in force from stations in the Indian territory about 400 miles nearer than Waco and as much as 600 miles nearer than Houston. These charges, so out of proportion to distance, and from most of the Indian territory even greater for distances so much shorter, show, as is claimed, that these shorter distance rates are extortionate and unreasonable.

In further support of the complaint that the rates of 70 cents from Wagoner, and 80 cents from Eufaula, South Canadian, and Stringtown to St. Louis are unreasonable it is shown that except as to the last-named from which it was 65, the defendant's rate from all those places to St. Louis was 60 cents in May, 1889, how much earlier does not appear, and so continued until January 20, 1892, when the rates from the other places were made the same as from Springtown, 65 cents. Near the close of this year the rates in controversy were increased to 70 cents from the other stations, and to 75 from Stringtown, and were so maintained until the rates complained of were established in 1894. The defendant was then, from 1889 to 1894, as it is now, without competition from any of these stations except Wagoner; and while the lower rates were in force previous to 1893, the defendant did not reach St. Louis over its own line, and was compelled to divide such lower rates with other companies.

While the defendant has so increased its cotton rates one third, the value or market price of cotton, which adds to the expense and risk of transportation, and is an element in determining reasonable rates, has fallen off in greater proportion than the rates increased.

In the past few years, since 1891, the defendant has so improved its road and its transportation facilities as to greatly reduce the expenses and cost of transportation; it can haul now 1,000 tons

to 550 hauled a few years ago. The train load which was 20, is now 35 cars over most of its line, and especially in the Indian territory. The lower cost and expense of transportation resulting from betterments and improvements enabled the defendant to considerably reduce its transportation rates and charges generally. The reduction so made did not apply to the rates and charges on Indian territory cotton. During the year in which it increased the previously existing Indian territory rates on cotton and established those complained against, the defendant reduced its cotton rates from practically all other points. According to the testimony the reduction applied to 99 per cent of the cotton carried.

In the defense of the charges made and in explanation of the reason for increasing the rates in question, first to 65 and finally to 70 cents in 1892, and to 80 cents in 1894, necessity for larger income is urged; but it is not explained how increased receipts are to be derived from higher rates on Indian territory cotton, which is but a small portion of the defendant's cotton traffic, while on the body of the traffic of the road generally the rates were materially reduced.

Neither is it shown why additional transportation burdens should be imposed on the transportation of cotton from the Indian territory, while the road's general business, including other cotton traffic, was being relieved by reduction in rates and charges. Defendant alleges that the traffic will bear the increase, and supports the contention by proof that cotton continues to be offered for shipment. This proves only that to prevent the wasting of cotton in the field the grower must accept the transportation services of the defendant upon its own terms, none other being available.

Nor is it shown why, with a reduction in the expense of its carriage, charges for carriage should not also be reduced as well upon cotton as other freights. The chief, or, as claimed by the testimony of defendant's traffic manager, the "reason primarily" for establishing the rate of 80 cents was that such rate had been maintained over two other lines of railway similarly situated in the Indian territory, The Gulf, Colorado & Santa Fé from the vicinity of Red River, and the St. Louis & San Francisco road west of Vinita. But the average short-line distance from the points in the Indian territory on the Gulf, Colorado & Santa Fé



road, where the rate of 80 cents to St. Louis is maintained, is 250 miles greater than the average short-line distance to St. Louis from points similarly situated on defendant's line, bearing same rate. The St. Louis & San Francisco Company has no rate in force from the Indian territory as high as 80 cents, though that company carries cotton 560 miles to St. Louis from the territory. The rates over the Rock Island road from that territory to St. Louis are less than the rates over the defendant's road, though the average distance over the latter is 250 miles shorter.

The defendant carries, and for several years has carried, cotton from the Indian territory points to St. Louis, to be forwarded to New York, and receives for its haul to St. Louis 65 cents. Out of this it pays 10 cents for compressing, first hauling it to Denison for that purpose, and we are convinced that the rates complained against are unreasonable and unlawful.

The facts which lead to the conclusion that the defendant's cotton rates are unreasonable are significant in determining the extent of their unreasonableness. They indicate the rates which are reasonable. For three years, ending in 1892, the rates here complained of were 60 cents, except as to Wagoner and Stringtown, from which they were 55 cents and 65 cents. Why are the rates which were then accepted as sufficient not more than sufficient now? All the conditions necessary to lower rates are more favorable now than they were then. The freight could bear a higher rate then, and is carried at lower cost now, and competition for the traffic was not then more active. The rate on the 100 lbs. of uncompressed cotton is more than double the defendant's cattle rate, and the earnings upon a car of uncompressed cotton at the rates in force previous to 1892, would equal that derived from the carload of cattle, which is heavier, and is hauled and handled at greater expense to the road. The earnings now derived from uncompressed cotton at the prevailing rates far exceed the earnings from other freights carried to and from the Indian territory and are excessive in comparison with defendant's charges upon other traffic.

We do not overlook the financial embarrassment of the company, resulting from the demands upon its earnings to meet an investment or capitalization aggregating \$79,547 per mile. In view of the fact that the road runs through a comparatively

level country, and could have been built at moderate cost, the presumption is great that some of this money was improvidently spent or misapplied. But it remains an encumbrance and burden upon the road, though the financial condition of the company is much improved since the years previous to 1892, when its rates and charges were lower; its straitened financial necessities should not be made to bear unequally upon the cotton traffic. The financial necessities and conditions of the road should, like other facts, be given "proper weight." We have held that "the reasonable rate should be liberal until earnings are sufficiently large for a fair return on the actual expenditure." *Newland v. Northern P. R. Co.* 6 I. C. C. Rep. 131, 4 Inters. Com. Rep. 474. While the demands upon the road and its earnings must be considered and receive due weight, they are not controlling to the extent that independent of all other circumstances, rates are never unreasonable until the earnings are sufficient to operate the road and meet all the obligations of the company. The absurdity of such a rule is apparent in the facts. The Missouri, Kansas & Texas Railway, defendant, and the Chicago, Rock Island & Pacific Railway are both carriers from and to the Indian territory. For like distances their rates must necessarily be nearly the same to be reasonable. But the obligations of the defendant are \$79,547 per mile, while the obligations of the Chicago, Rock Island & Pacific Railway are \$36,483, or less than half as much per mile. The stated obligations of the carriers between St. Louis and Texas, and St. Louis and the Indian territory vary all the way from less than \$13,000 to more than \$103,000 per mile. As stated in their reports, the obligations to be met by earnings are eight times as great on some as upon others, and the impracticability of adjusting reasonable rates on the basis of the bonds and stocks issued or on capitalization is apparent.

For these and other reasons arising upon the facts found we are made to believe that to be reasonable the rate from Wagoner, Eufaula, and South Canadian should not exceed 60 cents, and from Stringtown should not be more than 65 cents, on the 100 lbs. of uncompressed cotton.

The prayer of the petitioner is that the freight rates of the defendant company may be revised and readjusted to a reason-

able basis, that said company may be compelled to refund the amounts paid by complainant above reasonable rates on the several shipments shown by the petition and exhibits, and that the amounts required to be so refunded shall include the sums exacted and paid in excess of reasonable rates up to the time when this case shall be decided.

On the basis of the rates we have decided to be reasonable, 60 cents from Wagoner, Eufaula, and South Canadian, and 65 cents from Stringtown, the amounts so paid in excess of reasonable rates is \$261.77, on the several shipments from these places as shown by the petition, exhibits, and proofs. At the hearing a much greater sum was claimed, but no proof was offered in support of the claim during the sitting, and aside from the sums paid above reasonable rates since the commencement of this proceeding, the sums so claimed were not upon shipments mentioned or included in the petition and exhibits. The complainant is entitled to receive from the defendant said sum of \$261.77 for that amount paid in excess of reasonable rates on the shipments made before the commencement of this proceeding, from Wagoner, Eufaula, South Canadian, and Stringtown; and further, the complainant is allowed until August 1, 1896, to make proof of amounts paid on shipments, since the filing of this complaint, from these places to St. Louis, in excess of rates determined herein to be reasonable. An order will be issued in accordance herewith.

IN THE MATTER OF ALLEGED UNLAWFUL TRANSPORTATION CHARGES BY THE ILLINOIS CENTRAL RAILROAD COMPANY.

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No. 881.

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Decided June 26, 1896.

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1. Application of combination rates to through and continuous shipments criticised as unjust.
2. Upon complaint forwarded by the Railroad Commission of Mississippi, and investigation thereon instituted by the Commission on its own motion, respondent materially reduced its rates of freight between Memphis, Tenn., and Coldwater, Miss., and other stations on its Memphis division, such rates having been the principal subject of testimony in the proceeding, but it also appearing that such rates should be further revised as to certain points and traffic specified,—*Held*, upon such action of respondent, and the disposition thus manifested to remove just cause of complaint and make the further revision required, that no order be entered at this time, and that all the matters involved be held open for such further action or investigation as, upon the application or petition of any interested party, may appear necessary.

*W. R. Dougherty* for Complaining Shippers.  
*James Fentress* and *J. B. Harris* for Respondent.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner* :

This case was instituted by an order of the Commission entered on March 27, 1894, which reads as follows :

“ A complaint having been forwarded to this Commission by

the Mississippi Railroad Commission alleging that rates in force over the lines of the Illinois Central Railroad Company for the transportation of freight articles shipped from St. Louis, Missouri, and from Memphis, Tenn., to Coldwater, Miss., a point on the Memphis division of said company, are unlawful, and alleging further that the rates of said company for carrying cotton from Coldwater to Memphis and from Coldwater to New Orleans, La., are also unlawful, and said Mississippi Railroad Commission having requested this Commission to investigate the said charges, and it appearing to this Commission by an inspection of schedules or tariffs of rates and charges filed with it under section 6 of the Act to regulate commerce that the said Illinois Central Railroad Company has in force on its said Memphis division the following rates per 100 lbs., for the transportation from Memphis to Coldwater of the various classes of freight articles as set forth in the classification of said articles in force upon its lines, to wit:

Classes,	1	2	3	4	5	6	A	B	C	D	E	H	F
													(per bbl.)
Rates,	42	34	28	23	20	18	18	20	19	14	20	28	32;

and that the following rates per hundred pounds upon said classes have also been put in force over the said Illinois Central Railroad for the transportation of freight articles shipped from St. Louis to Memphis:

Classes,	1	2	3	4	5	6	A	B	C	D	E	H	F
													(per bbl.)
Rates,	65	50	45	35	30	25	15	15	15	12	20	15	30;

and that a considerable number of exceptional or lower rates on named commodities have also been put in force over said Illinois Central Railroad on shipments from St. Louis to Memphis, whereby, among other things, Stoves, Hardware, Wire, etc., are carried from St. Louis to Memphis, a distance of 311 miles, at a rate of 15 cents per hundred pounds, and upon a shipment of Stoves, Hardware or Wire, from Memphis to Coldwater, a distance of 31 miles, the said carrier has in force for the carriage of said articles the above mentioned third class rate of 28 cents per hundred pounds, and the total rate upon a similar shipment from St. Louis to Coldwater, amounting to 43 cents per hundred

pounds, is made up of the said 15 cent rate to Memphis added to the said 28 cent rate from Memphis to Coldwater; and it also appearing from an examination of the rates above set forth that the said Illinois Central Railroad Company does also charge for the carriage of flour from Memphis to Coldwater a rate of 32 cents per barrel, and that the said carrier has also in effect over its road a rate of 30 cents per barrel on flour shipped from St. Louis to Memphis, and that the total charge for the transportation of a shipment of flour from St. Louis to Coldwater is the sum of said rates, to wit, 62 cents per barrel; and it also appearing that rates on all other freight articles transported between St. Louis and Coldwater are made by the addition of rates to and from Memphis as above referred to or described. And it also appearing that rates to all other stations on said Memphis division of the Illinois Central Railroad from Memphis, St. Louis, or other points, are adjusted upon a like or similar basis."

"And it further appearing that said Illinois Central Railroad Company has in force certain rates for the transportation of cotton, to wit:

"From Memphis through Coldwater to New Orleans, a rate of \$1.25 per bale of uncompressed cotton not exceeding 500 lbs. in weight. From Coldwater to New Orleans \$2.15 per said bale. From Coldwater to Memphis, \$1.15 per said bale. And upon compressed cotton the rate in force from Memphis to New Orleans is 20 cents per 100 lbs., shipper paying cost of compressing."

"And it further appearing by inspection of such schedules or tariffs of rates and charges that the Illinois Central Railroad Company also has rates in force for the transportation of cotton and other freight articles between New Orleans and Memphis and intermediate points which show apparently excessive differences between lower rates for the longer distance to or from Memphis and higher rates for shorter distances to or from Coldwater and other intermediate points."

"And it further appearing to the Commission that rates and charges hereinabove referred to or described are *prima facie* excessive, unreasonable, unjustly discriminating and unduly prejudicial to Coldwater, Miss., and other points upon the lines of the said Illinois Central Railroad Company and to dealers, merchants,

consumers and shippers at said points, and that certain of said rates also appear *prima facie* to be in contravention of the fourth section of the Act to Regulate Commerce:

"It is Ordered, That an inquiry and investigation into the legality of the rates and charges above referred to or described be and is hereby instituted, and that the Illinois Central Railroad Company is hereby made the respondent in said proceeding of inquiry and investigation and required to make and file full and specific answer to the statements and charges hereinabove recited within twenty days after the date hereof."

Answer was duly filed by the respondent, and a hearing was had at Coldwater on April 26, 1894, and later by the taking of testimony by deposition on behalf of respondent and filed September 15, 1894. Time, without special limit, was allowed for the presentation or filing of arguments and briefs by the respondent and other parties in interest. The case on behalf of the Coldwater people was submitted without brief or argument on January 11, 1895. By notice sent to the carrier's attorney on December 21, 1894, the respondent was allowed 30 days from that date within which to prepare and file a brief or argument on its behalf. Upon the expiration of such time, namely, on January 22, 1895, the Commission took the matter under advisement.

The complaint in this proceeding originated with citizens of Coldwater, Miss., and having been presented to the Mississippi Railroad Commission, was, as above stated, forwarded by it to this Commission with request for investigation. The order, above set forth, calls for answer and investigation of various rates besides those questioned by the complaining parties, but at the hearing the conduct of the case against the respondent devolved upon interested parties at Coldwater, Senatobia, Como and Sardis, Miss., points on respondent's Memphis division, and the testimony relates mainly to rates in force on traffic carried between said points and Memphis, in either direction.

On May 27, 1895, considerable reductions in rates between said points on all classes of freight were put into effect by the respondent company. The following table shows both the old and new rates in force on class freight, including flour in class F, on cotton per bale, uncompressed, and on cotton seed per ton of 2,000 pounds, between Memphis and the principal stations on the Memphis division:

Reduced rates effective May 27, 1966, per supplement 40 to Illinois Central R. R.—M—57. File 8002.

The rates now in effect in both directions between Memphis, on the one hand, and Coldwater, Senatobia, Como and Sardis, on the other, compare favorably, as a whole, with rates for like distances between Memphis and stations on the Yazoo & Mississippi Valley and Kansas City, Memphis & Birmingham roads, which penetrate the same section of country on both sides of respondent's Mem-



phis division. This is shown by the following tabular statement of rates between Memphis and stations situated similar distances from Memphis and reached by these roads:

CLASSES.													COMMODITIES.			
Between Memphis and	Miles from Memphis.													F. per Bbl.	Cotton per Bale.	Cotton Seed per ton.
		1	2	3	4	5	6	A	B	C	D	E	H			
Coldwater (Ill. Cent.) .....	31.	35	30	22	19	18	16	15	15	15	13	18	21	25	1.00	1.50
Hollywood (Y. and M. V.) .....	34.5	42	36	30	26	22	19	19 1/2	17 1/2	17 1/2	13 1/2	20 1/2		26 1/2	1.00	1.70
Byhalia (K. C. M. and B.) .....	28.8	30	26	20	17	16	14	13	13	13	11	17	20	22	.50	1.40
Senatobia (Ill. Cent.) .....	37.	37	32	24	21	19	17	16	15	15	13	19	22	26	1.25	1.60
Tunica (Y. & M. V.) .....	38.8	45	38	32	28	23	20	16 1/2	17 1/2	17 1/2	13 1/2	21 1/2		27 1/2	1.15	1.75
Red Banks (K. C. M. and B.) .....	36.	40	35	27	24	20	18	17	15	15	13	19	22	26	1.00	1.80
Como (Ill. Cent.) .....	44.	42	36	27	24	20	19	18	18	17	15	21	25	30	1.45	1.90
Clayton (Y. and M. V.) .....	45.4	48	40	34	29	24	21	19 1/2	18 1/2	18 1/2	14 1/2	22 1/2		28 1/2	1.25	1.80
Holly Springs (K. C. M. and B.) .....	44.7	45	37	30	26	23	20	18	17	16	13	20	24	27	1.45	1.80
Sardis (Ill. Cent.) .....	50.	47	40	30	27	23	21	21	21	20	17	23	28	34	1.60	2.20
Lula (Y. and M. V.) .....	56.4	52	44	37	32	26	23	19 1/2	20 1/2	19 1/2	13 1/2	21 1/2		31 1/2	1.70	1.95
Potts Camp (K. C. M. and B.) .....	57.4	48	39	31	28	24	20	19	18	17	14	21	25	29	1.50	1.80

Y. & M. V.  
r. l. e. s. o. n.  
c. l. a. s. s. e. s.  
A.  
B. C. D. E.  
and F. are  
divided for  
C. L. and L.  
C. L. (Local  
classification.)

Y. & M. V.  
files on  
classes A,  
B, C, D, E,  
and F are  
divided for  
C, L, and L,  
C, L, (Local  
classification.)

Comparison with rates on the Yazoo & Mississippi Valley and Kansas City, Memphis & Birmingham roads was made at the hearing, but the comparison as herein set forth is not to be understood as implying any approval of the charges of such carriers. Rates to Memphis on cotton from Coldwater, Senatobia, and Como, and rates on flour to and cotton seed from Como and Sardis, are noticeable exceptions to the statement above made that present rates to and from those points compare favorably with rates to similar distance points on the other two roads. These, however, are largely to be ascribed to irregularities in respondent's present tariff, and to greatly reduced cotton rates from Byhalia and Red Banks to Memphis on the Kansas City, Memphis & Birmingham road. Charging 25 cents per bale more on cotton from Senatobia than from Coldwater to Memphis, with only six miles difference in distance, seems too great an increase considering the very slight additional haul. The 20-cent increase of Como over Senatobia, with a distance between them of only seven miles, also appears too great. The relation of present tariff rates on cotton seed to Memphis also requires notice. An increase at Como of 30 cents per ton over Senatobia, which takes a rate of only 10 cents above Coldwater, seems too much, and the same objection applies to the rate from Sardis, which is 30 cents above the charge from Como. The addition of 4 cents above Senatobia at Como and 4 cents above Como at Sardis, in flour rates to those points, also appears disproportionate in the light of flour charges stated in the same tariff to other Memphis division points. The improper relations of rates above noticed should be corrected by the respondent, and as far as possible, without raising any of the rates to or from its Memphis division points.

We shall not undertake in this report to do more than allude to the combination rates mentioned in the order hereinabove set forth as applying from St. Louis through Memphis to those points. The necessary parties are not before us to permit of any correction of such rates as a whole. It is proper to say, however, that although the material reductions above shown operate to decrease these rates, the practice of making through rates on continuous shipments by combination of charges separately established for distinct services is still open to criticism. The injustice of this method is strikingly illustrated by calculation of the rates

per ton per mile in this case. Rates per ton per mile from Memphis to Memphis division stations, based on rates per hundred pounds from Memphis, decrease as distance from Memphis increases, and this is according to a sound and generally accepted transportation rule; but rates per ton per mile from St. Louis to most stations on the Memphis division, based on the combination rates per hundred pounds from St. Louis, violate that principle and increase instead of decreasing with additional distance.

In view of the considerable reductions in rates generally on the Memphis division which have been made by the respondent since the case was submitted, as shown in the tabular statement above set forth, and a disposition thus manifested to remove just cause of complaint, and such rates having been the principal subject of testimony herein, and assuming as we do that further revision will be promptly made by the carrier as above indicated, no order is deemed necessary and none will now be entered, but all the matters involved will be held open for such further action or investigation as, upon the application or petition of any interested party, may appear necessary.

THE BOARD OF TRADE OF THE CITY OF LYNCHBURG, VA.; WITT & WATKINS; BELL, BARKER & JENNINGS; LEWIS & JENNINGS; ROBINSON, TATE & CO.; RIVERMONT FURNITURE CO.; STOVER, MARSHALL & WINFREE; KINNIER, MONTGOMERY & CO.; GUGGENHEIMER & CO.; HUGHES, EFFINGER & CO.; GIBBS, HANCOCK & TRINKLE; GILLIAM & CO.; AND CHRISTIAN, BEASLEY & CO. V. THE OLD DOMINION STEAMSHIP COMPANY; THE NORFOLK & WESTERN RAILROAD COMPANY AND F. J. KIMBALL AND HENRY FINK, RECEIVERS THEREOF; THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY AND SAMUEL SPENCER, C. M. MCGHEE AND HENRY FINK, RECEIVERS THEREOF; THE SOUTHERN RAILWAY COMPANY.

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THE BOARD OF TRADE OF THE CITY OF LYNCHBURG, VA.; WITT & WATKINS; BERRY, GILLIAM & CO.; CRADDOCK, TERRY & CO.; BELL, BARKER & JENNINGS; RIVERMONT FURNITURE CO.; STOVER, MARSHALL & WINFREE; HUGHES, EFFINGER & CO.; GIBBS, HANCOCK & TRINKLE; AND GILLIAM & CO. V. THE MERCHANTS' & MINERS' TRANSPORTATION COMPANY; THE NORFOLK & WESTERN RAILROAD COMPANY AND F. J. KIMBALL AND HENRY FINK, RECEIVERS THEREOF; THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY AND SAMUEL SPENCER, C. M. MCGHEE AND HENRY FINK, RECEIVERS THEREOF; THE SOUTHERN RAILWAY COMPANY.

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(Nos. 886, 887.)

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1. Under the fourth section of the Act to regulate commerce a carrier is not justified in charging more for the shorter than for the longer distance

by competition at the longer distance point of other carriers which are themselves subject to that Act, in the absence of authority from the Commission under the proviso clause of said section. *Trammell v. Clyde S. S. Co. (Georgia R. Commission Cases)*, 5 I. C. C. Rep. 324, 4 Intera. Com. Rep. 120, cited and reaffirmed.

2. When rates are relatively unjust, so that undue preference is afforded to one locality or undue prejudice results to another, the law is violated and its penalties incurred, although the higher rate is not in itself excessive, and such rule is especially applicable where a given relation in rates, long continued and concededly equitable, is suddenly and almost completely reversed, merely because other carriers to the longer distance point have disregarded their legal duty.
3. During the period between May 20 and August 1, 1894, when greatly reduced rates were charged by defendants to Knoxville, Tennessee, dealers at Lynchburg, Virginia, an intermediate locality, were entitled to rates over the defendant lines from New York, Providence and Boston not greater than those accepted at the same time on like traffic over said lines to Knoxville, and the excess paid for transportation by the intervening Lynchburg dealers over contemporaneous rates to Knoxville was unlawfully collected.

*Caskie & Coleman* for complainants.

*Joseph I. Doran* for Norfolk & Western Railroad Company and Receivers.

*T. J. and F. S. Kirkpatrick* for Norfolk & Western Railroad Company and Receivers and Old Dominion Steamship Company.

*Wm. H. Payne* and *C. M. Blackford* for Southern Railway Company.

*W. A. Henderson* for East Tennessee, Virginia & Georgia Railway Company and Receivers.

#### REPORT AND OPINION OF THE COMMISSION.

##### **KNAPP, Commissioner :**

These cases were instituted by complaints filed June 29, 1894, by the Board of Trade of the City of Lynchburg, Virginia, against the following named defendants: The Old Dominion Steamship Company, The Norfolk & Western Railroad Company, and The East Tennessee, Virginia & Georgia Railway Company and Samuel Spencer, C. M. McGhee and Henry Fink, Receivers thereof, in case No. 386; and The Merchants' & Miners' Transportation Company, The Norfolk & Western Railroad Company, and The

East Tennessee, Virginia & Georgia Railway Company and Samuel Spencer, C. M. McGhee and Henry Fink, Receivers thereof, in case No. 387.

By order of the Commission dated August 24, 1894, the Southern Railway Company, having come into possession of the East Tennessee, Virginia & Georgia Railway, was made a party defendant in both cases; and by order of the Commission entered February 9, 1895, F. J. Kimball and Henry Fink, who had been appointed receivers of The Norfolk & Western Railroad Company, were, as such receivers, made parties defendant in each proceeding.

One of the complaints, No. 386, relates to class rates from New York, N. Y. and the other, No. 387, to class rates from Boston, Massachusetts, to Lynchburg, Virginia, as compared with class rates from the same points of shipment to Knoxville, Tennessee. Both complaints allege in substance that prior to June 2, 1894, the rates charged over the through lines or routes of defendants from New York or Boston to Lynchburg and Knoxville were as follows:

	Classes	1	2	3	4	5	6
To Lynchburg—Rates in cents.....		54	47	38	25	22	18
To Knoxville— " " .....		100	85	70	55	48	40

That on June 2, 1894, the defendants reduced their rates on such classes of freight to Knoxville, and that thereafter the rates from Boston and New York to Lynchburg and Knoxville were as follows:

	Classes	1	2	3	4	5	6
To Lynchburg—Rates in cents.....		54	47	38	25	22	18
To Knoxville— " " .....		35	30	24	19	17	14

That under this adjustment of rates, so established and in force over the defendant lines subsequent to June 2, 1894, the defendants unlawfully charged and collected greater compensation in the aggregate for the transportation, under substantially similar circumstances and conditions, of like kind of property from the city of New York or the city of Boston, for the shorter distance to Lynchburg than for the longer distance over the same line, in the same direction, to Knoxville, the shorter being included within the longer distance in each case. It is also alleged in the

complaints that by such adjustment of transportation charges the rates to Lynchburg were made unjust and unreasonable, and that undue and unreasonable preference was thereby given to the city of Knoxville.

The rates in effect to Knoxville prior to June 2, 1894, were restored by defendants on August 1, 1894.

The Old Dominion Steamship Company and the Norfolk & Western Railroad Company and its receivers demurred to the complaints as insufficient, not specific, and failing to show a breach of legal duty by the defendants, and they gave notice in their answers that at the hearing motion would be made to dismiss the complaints for insufficiency. These defendants also formally deny the violations of law alleged in the complaints, but they admit that the rates in force between the above-mentioned dates were as stated in the complaints. It is further averred in such answers that the temporary reduction of rates to Knoxville was necessary to meet the reduced rates of competing carriers to that point, and that such competing carriers having restored the rates in force to Knoxville prior to June 2, 1894, like action was immediately taken by the defendant lines.

The answer of the Merchants' & Miners' Transportation Company states that the rates in question are "covered by tariffs issued by the rail lines, which tariffs are regularly compiled and filed with the Commission by the issuing lines, and should there be anything contrary to the law in the rates so issued, we have no doubt that the issuing lines will satisfactorily explain the rates complained of to your honorable Commission."

The answers of the receivers of the East Tennessee, Virginia & Georgia Railway Company aver that such railway passed into the possession of the Southern Railway Company on July 31, 1894; that in their operation of said railway they have not been engaged in transportation from New York or Boston to Lynchburg; that because of the location of such railway they could not have been engaged in such transportation, and are therefore in no manner concerned in charges for any such transportation, and cannot be held responsible therefor.

The answer of the Southern Railway Company is to the effect that it did not come into possession of the East Tennessee, Virginia & Georgia Railway until August 1, 1894, and on that day the old rates to Knoxville were again put in force.

By order of the Commission dated February 27, 1895, Messrs. Witt & Watkins and various other firms, members of the complaining Board of Trade, and doing business in the city of Lynchburg, were allowed to intervene as parties complainant herein, and their petitions were filed and served as supplemental complaints in these proceedings. These supplemental complaints allege that because of the unjust discrimination and undue prejudice against the city of Lynchburg, and by reason of the unjust and unreasonable charges made and exacted as aforesaid by defendants in the matter of transportation charges from New York and Boston and Boston points to Lynchburg, the petitioners have suffered loss and damage; that itemized accounts or statements are filed therewith showing the amount paid by each of them to defendants for the transportation of goods during the time the discriminating rates were in effect, and the excess or overcharge made against each firm above rates at the time in force and charged from the same points of shipment to the city of Knoxville. The excess charges so claimed to have been collected from the intervening petitioners are set forth in the supplemental complaints, and it is prayed that such of the defendants as may be found liable in the premises be required to make proper reparation to the petitioners respectively for the damage or injury alleged herein.

Answers were filed to the supplemental petitions or complaints by the Old Dominion Steamship Company and the Norfolk & Western Railroad Company and its receivers in Case No. 386, and by the Norfolk & Western Railroad Company and its receivers in Case No. 387, and the allegations and averments contained in their answers to the original complaints were substantially repeated therein. They admit that the amounts claimed in the supplemental petitions or complaints to have been paid by the intervening petitioners on goods carried for them between June 2, 1894, and August 1, 1894, in excess of charges in force on like traffic to Knoxville from the same points of shipment are correctly set forth in said complaints, but deny that the rates paid for such transportation by said petitioners were in excess of just and reasonable rates, or that they are accountable to the petitioners for the said amounts or for any other sums of money whatsoever.

The cases were heard together at Lynchburg on May 24, 1895. There is no complaint that the rates from Boston or Boston points,



or New York city, to Lynchburg and Knoxville prior to June 2, 1894, or subsequent to August 1, 1894, constituted a violation of any provision of the Act to regulate commerce. The only questions for determination are whether the rates of defendants, or any of them, applied to such transportation between said dates were in contravention of that Act, and if so, whether the intervening petitioners are entitled to reparation on account of unlawful charges exacted from them during the period mentioned. There is practically no dispute as to the facts, and those that are deemed material will be briefly stated.

#### FACTS.

1. The complainant, The Board of Trade of the City of Lynchburg, Virginia, is an incorporated association of merchants and dealers at said city, and the intervening complainants in Case No. 386, Witt & Watkins, Bell, Barker & Jennings, Lewis & Jennings, Robinson, Tate & Co., Rivermont Furniture Co., Stover, Marshall & Winfree, Kinnier, Montgomery & Co., Guggenheimer & Co., Hughes, Effinger & Co., Gibbs, Hancock & Trinkle, Gilliam & Co., and Christian, Beasley & Co.; and the intervening complainants in Case No. 387, Witt & Watkins, Berry, Gilliam & Co., Craddock, Terry & Co., Bell, Barker & Jennings, Rivermont Furniture Co., Stover, Marshall & Winfree, Hughes, Effinger & Co., Gibbs, Hancock & Trinkle, and Gilliam & Co.,—are merchants and dealers doing business at Lynchburg, Virginia, and members of the complaining Board of Trade.

2. The points of shipment involved in these cases are New York, N. Y., Boston, Massachusetts, and Providence, Rhode Island, the last named point taking Boston rates, and the points of destination concerned are Lynchburg, Virginia, and Knoxville, Tennessee.

3. Transportation from New York, N. Y., to Lynchburg and Knoxville is, and for several years has been, conducted by continuous carriage or shipment over a line composed of the Old Dominion Steamship Company's vessels to Norfolk and the Norfolk & Western Railroad to Lynchburg, thence by the Norfolk & Western Railroad to Bristol, Tennessee, and the East Tennessee, Virginia & Georgia Railway (now Southern Railway) to

Knoxville, Tennessee. This transportation from New York to Knoxville and Lynchburg is over the same line, in the same direction, and the shorter distance to Lynchburg is included within the longer distance to Knoxville. The distance from Lynchburg to Knoxville over said route or line is 335 miles. For a considerable time prior to August 1, 1894, the Old Dominion Steamship Company, the Norfolk & Western Railroad Company, and Samuel Spencer, C. M. McGhee and Henry Fink, receivers of the East Tennessee, Virginia & Georgia Railway Company, were engaged as common carriers in the transportation of property by continuous carriage or shipment over said route or line, partly by railroad and partly by water; and the said the Old Dominion Steamship Company and the Norfolk & Western Railroad Company participated in the transportation of property from New York to Lynchburg and Knoxville over said route or line, and received out of total or aggregate charges established and collected for such transportation certain agreed shares or proportions of such aggregate charges.

Transportation from Boston or Providence to Lynchburg and Knoxville is, and for several years has been, conducted by continuous carriage or shipment over a line composed of the Merchants' & Miners' Transportation Company's steamships to Norfolk and the Norfolk & Western Railroad to Lynchburg, thence by the Norfolk & Western Railroad to Bristol, Tennessee, and the East Tennessee, Virginia & Georgia Railway (now Southern Railway) to Knoxville, Tennessee. Such transportation from Boston or Providence to Knoxville and Lynchburg is over the same line, in the same direction, and the shorter distance to Lynchburg is included within the longer distance to Knoxville. For a considerable time prior to August 1, 1894, the Merchants' & Miners' Transportation Company, the Norfolk & Western Railroad Company, and Samuel Spencer, C. M. McGhee and Henry Fink, receivers of the East Tennessee, Virginia & Georgia Railway Company, were engaged as common carriers in transportation by continuous carriage or shipment over said route or line, partly by railroad and partly by water, and the said Merchants' & Miners' Transportation Company and the Norfolk & Western Railroad Company participated in the transportation of property from Boston and Providence to Lynchburg and Knox-

ville over said line or route, and received out of total or aggregate charges established and collected for such transportation certain agreed shares or proportions of such aggregate charges. Since August 1, 1894, the East Tennessee, Virginia & Georgia Railway has been in the possession of and operated by the Southern Railway Company, and since February 6, 1895, F. J. Kimball and Henry Fink have, as receivers of the Norfolk & Western Railroad Company, been in possession of and operating the Norfolk & Western Railroad.

4. From May 29, 1894, to June 2, 1894, the carriers so engaged in transportation to Lynchburg and Knoxville over said line from New York and over said line from Boston or Providence had in effect for the transportation of freight articles embraced in classes 1 to 6 inclusive of the freight classification in force over such lines and between said points, the following rates in cents per 100 pounds:

From New York, Boston or Providence		Classes					
To		1	2	3	4	5	6
Lynchburg—Rates.....		54	47	38	25	23	18
Knoxville ".....		80	70	53	39	35	24

Prior to May 29, 1894, and on and after August 1, 1894, the carriers engaged in transportation to Lynchburg and Knoxville over said line from New York and over said line from Boston or Providence had and they now have in force for the transportation of said classes of freight articles from Boston, Providence or New York to Lynchburg and Knoxville the following rates in cents per 100 pounds:

From New York, Boston or Providence		Classes					
To		1	2	3	4	5	6
Lynchburg—Rates.....		54	47	38	25	23	18
Knoxville ".....		100	85	70	55	48	40

that is to say, the rates on said classes of freight to Lynchburg were and now are from 45 to 55½ per cent of the rates to Knoxville. Substantially the same relation of rates to Lynchburg and Knoxville had been in effect over the defendant roads for a number of years prior to May 29, 1894. From June 2, 1894, and until August 1, 1894, the carriers so engaged during that period in transportation to Lynchburg and Knoxville over said line from

New York and over said line from Boston or Providence had in force thereover and charged for the transportation of said classes of freight articles from Boston, Providence or New York to Lynchburg and Knoxville the following rates in cents per 100 pounds :

	Classes	1	2	3	4	5	6
To Lynchburg—Rates-----		54	47	38	25	23	18
To Knoxville "-----		85	80	24	19	17	14

that is to say, the rates on said classes of freight to Lynchburg, during such time, were from about 128½ to 156½ per cent of the rates to Knoxville.

5. Traffic from New York, Boston or Providence to Knoxville may be carried over lines other than those of the defendants herein, and such other lines are competitors with defendants for the carrying trade to Knoxville and other points in the south. Among such competing lines are the Mallory Steamship Company and its rail connections from Brunswick, Georgia, and the Clyde Steamship Company and rail connections from Charleston, South Carolina. The defendants, the Old Dominion Steamship Company and the Merchants' & Miners' Transportation Company also connect at Virginia ports with various rail carriers, and form lines for the carriage of traffic to Knoxville and other southern points. Traffic from New York, Boston or Providence to Lynchburg may also be carried over other lines than those operated by the defendant carriers, for example, the Old Dominion or Merchants' & Miners' Steamship line in connection with the Chesapeake & Ohio or Southern Railway (formerly Richmond & Danville System). Both Lynchburg and Knoxville may be reached by several all-rail lines from New York, Boston or Providence. Short line distances by rail from Boston, Massachusetts, New York, N. Y., Norfolk, Virginia, Wilmington, North Carolina, Charleston, South Carolina, Savannah and Brunswick, Georgia, to Knoxville are as follows: From Boston, 950 miles; from New York, 737 miles; from Norfolk, 539 miles; from Wilmington, 460 miles; from Charleston, 420 miles; from Savannah, 432 miles; from Brunswick, 511 miles. The distance by the Norfolk & Western R. R. from Norfolk to Lynchburg is 204 miles, and by that road through Lynchburg and the Southern Ry. the distance to Knoxville is 539 miles. These are the short

distances from Norfolk. The short line all-rail distance from New York to Lynchburg is 402 miles (Pennsylvania & Southern), and this distance is shorter by 137 miles than the short line distance from Norfolk to Knoxville, and shorter than the distance above given from any south Atlantic port to Knoxville. Distances by water, nautical miles, from Boston and New York to Norfolk (Newport News), Charleston and Savannah, as published by the Hydrographic Office, Navy Department, are as follows: From Boston to Norfolk (Newport News), 515 miles; to Charleston, 849 miles; to Savannah, 919 miles. From New York to Norfolk (Newport News), 281 miles; to Charleston, 629 miles; to Savannah, 699 miles. All of the various competing carriers for traffic from Boston, Providence or New York to Lynchburg or Knoxville during the year 1894 and up to the present time were and are engaged in the transportation of such traffic by continuous carriage or shipment, and such transportation is between points in different states.

6. The defendant carriers are members of a fast freight line association called the Virginia, Tennessee & Georgia Air Line. Rates are issued and published by the carriers through the medium of such association, and in tariffs so issued and published rates from Boston, Providence and New York to Lynchburg and Knoxville are specified. The reductions of rates to Knoxville which took place on May 29 and June 2, 1894, were not confined to the defendant lines. On or about the 1st of June, 1894, very large reductions in rates to southern territory were put in force by other carriers thereto in consequence of a rate war then existing between various carrying lines to points in that section, and these reduced rates, "authorized by the Commissioner of the Southern Railway & Steamship Association," were met by the defendant lines. When the higher rates to Knoxville were restored on August 1, 1894, as above stated, there was a like restoration to various points in southern territory to which reduced rates had in the meantime been applied. The Norfolk & Western Railroad, the delivering carrier for Lynchburg traffic in these cases, is not a member of the Southern Railway & Steamship Association, but the East Tennessee, Virginia & Georgia Railway (now part of the Southern Railway System), the delivering road for Knoxville traffic in these cases, was, and its successor is, a member of such association.

7. None of the defendants so engaged in transportation to Lynchburg and Knoxville prior to June 2, 1894, and up to August 1, 1894, applied to this Commission for authority to charge less for the transportation of property for the longer distance to Knoxville than for the shorter distance over the same line to Lynchburg, for any period of time whatsoever; nor did any other carrier engaged in the transportation of property to Knoxville apply for leave to charge less on such transportation for the longer distance to Knoxville than for a shorter distance to any intermediate locality, and no such leave or authority has been granted by this Commission.

8. Wholesale merchants at Lynchburg and Knoxville are in competition with each other for much of the trade in the adjacent or intervening territory. The greatly reduced rates to Knoxville during June and July, 1894, enabled merchants at that point to procure large supplies of goods from Boston, New York or Providence, and other northern points of shipment, at a cost for transportation which was less than the cost of transportation on like traffic to Lynchburg by from 4 to 19 cents per 100 pounds, and which was less than the prior and later cost of transportation to Knoxville by from 26 to 65 cents per 100 pounds. The carriers over the defendant lines during such period could have reduced the rates from New York, Boston or Providence to Knoxville by from 22 cents on 6th class to 46 cents on 1st class articles, and yet have charged rates to Knoxville which were not lower than those in force to Lynchburg.

9. The claims for reparation in these cases are based upon the difference in rates to Knoxville and Lynchburg during the time above specified, such rates having been, as above set forth, from 4 to 19 cents lower to Knoxville than to Lynchburg, the shorter distance point.

The charges admitted to have been collected from the several intervening petitioners in Case No. 386 by the Old Dominion Steamship Company and the Norfolk & Western Railroad Company for the transportation of various articles of freight shipped to them from New York and transported by said carriers to Lynchburg, and also shown by expense bills issued by the delivering carrier, the Norfolk & Western Railroad Company, and on file herein, were in excess of charges made by said carriers in con-

nection with the receivers of the East Tennessee, Virginia & Georgia Railway for the contemporaneous transportation of like traffic from New York to Knoxville in the following sums, to wit:

Witt & Watkins .....	\$ 8 04
Bell, Barker & Jennings.....	9 19
Lewis & Jennings.....	4 83
Robinson, Tate & Co.....	6 16
Rivermont Furniture Co.....	85
Stover, Marshall & Winfree.....	4 06
Klunier, Montgomery & Co.....	6 27
Guggenheimer & Co.....	44 95
Hughes, Effinger & Co.....	2 19
Gibbs, Hancock & Trinkle.....	3 92
Gilliam & Co.....	3 20
Christian, Beasley & Co.....	14 45
<b>Total.....</b>	<b>\$109 01</b>

The charges admitted to have been collected from the several intervening petitioners in Case No. 387 by the Merchants' & Miners' Steamship Company and the Norfolk & Western Railroad Company for the transportation of various articles of freight shipped to them from Boston or Providence and transported by said carriers to Lynchburg, and also shown by expense bills issued by the delivering carrier, the Norfolk & Western Railroad Company, and on file herein, were in excess of charges made by said carriers in connection with the receivers of the East Tennessee, Virginia and Georgia Railway Company for the contemporaneous transportation of like traffic from Boston or Providence to Knoxville, in the following sums, to wit:

Witt & Watkins.....	\$488 80
Berry, Gilliam & Co.....	181 68
Craddock, Terry & Co.....	76 32
Bell, Barker & Jennings.....	1 78
Rivermont Furniture Co.....	7 06
Stover, Marshall & Winfree.....	85
Hughes, Effinger & Co.....	3 21
Gibbs, Hancock & Trinkle.....	22
Gilliam & Co.....	1 06
<b>Total.....</b>	<b>\$660 48</b>

10. There is no water competition at Knoxville, and all shipments from New York and Boston are delivered at that place by rail. The various carriers competing with defendants for the

traffic from New York and Boston to Knoxville—whether forming wholly rail lines or part rail and part water lines—are all subject to the Act to regulate commerce.

11. The defendants assign no reason for the great reduction in rates to Knoxville, during the period above mentioned, except the action of these other carriers whose prior reductions to that point induced the defendants to meet the Knoxville rates of their competitors. This fact was insufficient to justify the defendants in maintaining higher rates to Lynchburg, in the absence of authority from the Commission under the proviso clause of the 4th section. The disproportionate rates actually applied to these towns by the defendants from June 2, 1894, to August 1, 1894, gave an undue and unreasonable preference and advantage to Knoxville and subjected Lynchburg to an undue and unreasonable prejudice and disadvantage.

The Lynchburg rate, which remained undisturbed during the time in question, is not *per se* excessive. The lower rate temporarily allowed to Knoxville was unremunerative, and probably involved an actual loss to the carriers.

12. The Southern Railway Company and the East Tennessee, Virginia & Georgia Railway Company did not participate in the transportation to Lynchburg, and no part of the charges paid by the intervening petitioners was received by these companies or by their respective receivers.

#### CONCLUSIONS.

For a long time prior to the summer of 1894, the defendant carriers which engaged in the transportation of property from the cities of New York and Boston, and other points on the north Atlantic seaboard, to Lynchburg, Virginia, and Knoxville, Tennessee, had maintained rates on classified traffic which appear to be relatively reasonable as between those destinations. Under this adjustment charges to Lynchburg averaged about 50 per cent of charges to Knoxville. About the 1st of June, 1894, these carriers made a great reduction in rates to Knoxville without changing the rates to Lynchburg. Under the schedules then put in force traffic was carried to the more distant locality at about 70 per cent of the charges maintained for the shorter haul. This disproportion continued until August 1st, 1894, when the



old Knoxville rate was restored. Since that time rates to both places have been the same as before the reduction to Knoxville. During this period of reduced rates to Knoxville, the intervening petitioners received various freight shipments on which they paid the regular Lynchburg rate. The sums so paid by them respectively, in excess of the lower charges then prevailing on like shipments to Knoxville, are set forth in the ninth finding of fact, and the figures there given are conceded to be correct.

In *Trammell v. Clyde S. S. Co.* (*Georgia R. Commission Cases*), 5 I. C. C. Rep. 324, 4 Inters. Com. Rep. 120, the fourth section of the Act to regulate commerce was carefully considered, and certain conclusions reached which have since been adhered to by this Commission. It was there held, in substance, that a given carrier is not justified in charging more for shorter than for longer distances by the competition at the longer distance point of other carriers which are themselves subject to the Act to regulate commerce, in the absence of authority from the Commission under the proviso clause of the fourth section. In such a case the "circumstances and conditions" are not deemed to be dissimilar, and the higher charge for the shorter distance is unlawful. The various decisions of the Federal courts which have since been rendered contain nothing, so far as we are aware, to discredit the correctness of this proposition or in conflict with the argument by which it is supported. Further adjudication may be at variance with this view of the fourth section, but in the present state of the law we see no reason for denying its application to the controlling question in these cases.

The sole excuse for the extraordinary reduction in rates to Knoxville was the prior reduction in rates to that point by other carriers which were themselves plainly subject to the Act to regulate commerce. In no case can this be deemed a sufficient justification, without the authority of a relieving order from this Commission. To hold otherwise is not only to abandon the construction of the fourth section which we have deliberately adopted, but to leave its proviso clause meaningless and inoperative.

The fact that the Lynchburg rate is *per se* reasonable does not disprove the charge that it is unlawful. If rates are relatively unjust, so that undue preference is afforded to one locality or undue prejudice results to another, the law is violated and its penal-

ties incurred, although the higher rate is not in itself excessive. Such a rule should certainly apply where, as in these cases, a given relation in rates—long continued and concededly equitable—is suddenly and almost completely reversed, merely because other carriers to the longer distance point have disregarded their legal duty.

In our judgment the maintenance of usual rates to Lynchburg, while much lower rates were allowed to Knoxville, was clearly unwarranted; it was a disobedience of the law which is not excused or condoned by the similar wrongdoing of other carriers in respect of their Knoxville rates. The Lynchburg dealers were entitled to rates not greater than those accepted at the same time on like traffic to Knoxville, and the excess paid by them above contemporaneous rates to the latter place was unlawfully collected. It follows that the intervening petitioners should be awarded reparation in the respective sums set forth in the ninth finding of fact.

**An order will be entered accordingly.**

**THE COMMERCIAL CLUB OF OMAHA V. THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & TEXAS RAILWAY COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE BURLINGTON & MISSOURI RIVER RAILROAD COMPANY IN NEBRASKA; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, AND ALDACE F. WALKER, JOHN J. MCCOOK AND J. C. WILSON, RECEIVERS THEREOF; THE GULF, COLORADO & SANTA FE RAILWAY COMPANY; THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY; THE INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY; THE TEXAS & PACIFIC RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; AND THE WABASH RAILWAY COMPANY.**

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*Decided August 21, 1896.*

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1. Carriers have no right to disregard distance and natural advantages for the purpose of bringing about commercial equality.
2. The practice, if lawful, of giving to Kansas City, on shipments from the west through Pueblo, Colorado Springs, Denver and Cheyenne, and from the northwest through Cheyenne, rates not higher than on such shipments to Omaha, furnishes no warrant for giving Omaha rates from Texas points not higher than those to Kansas City,—the circumstances and conditions in the two cases being substantially dissimilar.
3. Through rates are matters of contract between carriers composing through lines, and the Commission has no power to compel connecting carriers to contract with each other.

4. In a case before the Commission, instituted by complaint and strictly *inter partes*, matter not expressly put in issue by the pleadings or necessarily involved in issues so presented, cannot be authoritatively determined by the Commission.
5. If, in cases of shipments under a through bill of lading and a through rate, the privilege of "stoppage in transit" at an intermediate point and trying the market there, and, if it be found unsatisfactory, of reshipping on to the point of original destination at the balance of the through rate, be lawful, the granting of it to one locality and denying of it to another under substantially similar circumstances, would be an unjust discrimination against the latter.
6. The maxima class rates between Omaha and Texas points should not be as high as those between Chicago and Texas points, and should not exceed those between Davenport, Rock Island and Moline and Texas points, and the rate on syrup from Omaha should not be in excess of that from Davenport.

*W. D. McHugh*, for complainant.

*M. A. Low*, for Chicago, Rock Island & Pacific Railway Company.

*James Orr*, *J. C. Lincoln* and *J. H. Richards*, for Missouri Pacific Railway Company.

*James Hagerman*, for Missouri, Kansas & Texas Railway Company.

*Gardiner Lathrop*, for Atchison, Topeka & Santa Fé Railroad Company and Gulf, Colorado & Santa Fé Railway Company.

*H. S. Lovett*, for Houston & Texas Central Railroad Company.

*C. H. Dean*, for Commercial Club of Kansas City.

#### REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

"The Commercial Club of Omaha," a corporation organized under the laws of the State of Nebraska by citizens of Omaha and South Omaha in that State, charges in its complaint filed before this Commission, that the defendant carriers are guilty of violations of the "Act to regulate commerce," in that, *First*, the rates charged by them between Omaha and South Omaha and "each of the various stations on their roads, respectively, in the State of Texas," are "unreasonable and excessive;" *Second*, those rates between Omaha and South Omaha and said stations in Texas are higher than between St. Joseph, Kansas City, St.

Louis, Hannibal (Missouri), Ft. Madison, Keokuk, Davenport (Iowa), Peoria, Rock Island, Moline and Chicago (Illinois), and said stations, and by reason of this fact unjustly discriminate against Omaha and South Omaha and shippers at those cities in favor of St. Joseph, Kansas City, St. Louis, Hannibal, Ft. Madison, Keokuk, Davenport, Peoria, Rock Island, Moline and Chicago, and shippers thereat, thereby subjecting the former two cities to an undue or unreasonable prejudice or disadvantage and giving the latter cities an undue or unreasonable preference or advantage.

The particular rates to which, as alleged in the complaint, these charges apply, are: (1), class rates between Omaha and South Omaha and Texas points; (2), rates on sugar from Texas points to Omaha and South Omaha and rates on syrup from Omaha and South Omaha to Texas points; (3), rates on cottonseed oil from Texas points to Omaha and South Omaha; (4), rates on live stock from Texas points to Omaha and South Omaha; and, (5), rates on packing house products from Omaha and South Omaha to Texas points. The complainant alleges that "the class rates between Omaha and South Omaha and Texas points should not exceed the rates on different classes between points named in St. Louis territory" (St. Louis, Hannibal, Keokuk, Ft. Madison, Davenport, Rock Island and Moline), and, also, Kansas City and St. Joseph and Texas points; and that "the rates" (commodity) "on sugar, packing house products, cotton seed oil, live stock and other commodities between Omaha and South Omaha and Texas points should not exceed the rates between St. Joseph and Kansas City and Texas points."

The complaint sets forth the "differentials" which, it is claimed, the rates in question from and to Omaha and South Omaha exceed the rates from and to the other cities named, as follows:

"The rates between Omaha and South Omaha are the following differentials higher than the rates between points in what is termed St. Louis Territory (including St. Joseph, Kansas City, St. Louis, Hannibal, Keokuk, Ft. Madison, Davenport, Rock Island and Moline) and points in Texas, in cents per 100 pounds on classes.

Classes .....	1	2	3	4	5	A	B	C	D	E
Differentials .....	20	18	15	13	10	11	10	.08	.07	.07"

"In addition, the rates between Omaha and South Omaha (and Texas points) are the following differentials higher than between Kansas City and St. Joseph and Texas points.

Packing-house products, South bound,	7 cts. per 100 lbs.
Cotton seed oil, North	5 " " " "
Sugar,	6 " " " "
Live stock,	5 " " " "

It is further alleged, as "in part" illustrating the situation, that,

1. "A large syrup mixer in Omaha uses glucose as the basis of his manufactured goods, which glucose is bought in Chicago, Peoria and Davenport;" that "these cities compete with the Omaha manufacturer direct for the Texas trade;" that "the rate on glucose from Chicago to Omaha is 27 cts. per 100 lbs., from Peoria, 24½ cts., and from Davenport and St. Louis, 22 cts.," and "the rate on the manufactured goods in carloads to Texas is the same from Chicago as from Omaha, from Peoria 5 cts. per 100 lbs. less than from Omaha, and from Davenport and St. Louis 10 cts. per 100 lbs. less than from Omaha."

2. "Jobbers in boots and shoes, hats, caps, dry goods and other merchandise purchased east, ship through Chicago and Mississippi river points to Omaha, but in reshipping from Omaha pay Chicago rates from Omaha to Texas."

3. "It costs packers in South Omaha more to manufacture hog products than the packers in St. Joseph or Kansas City, for the Texas market," and "the rates on hogs are the same to St. Joseph, Kansas City and South Omaha from the best hog-raising sections in Nebraska—for example, Superior, Beatrice, etc."

4. "The rates on cattle from points beyond Cheyenne to Omaha, St. Joseph and Kansas City and *through* the three cities to Chicago are the same," but "from Texas to Omaha rates are 5 cts. per 100 lbs. higher than to St. Joseph or Kansas City, and shippers are not quoted rates to Chicago through South Omaha that can be used," while "they are quoted *through rates* to Chicago *via* St. Joseph or Kansas City."

5. "The rate on sugar from San Francisco to Omaha, St. Joseph and Kansas City through Cheyenne is the same," and "the rates on all classes from Omaha, St. Joseph and Kansas City to the best parts of Nebraska are the same; but the rate from Texas points on sugar to Omaha is 5 cts. per 100 lbs. higher than to Kansas City or St. Joseph, so that the grocer jobbers at St. Joseph and Kansas City have an advantage over the Omaha jobbers in the state of Nebraska on products from Texas."

The defendants, with the exception of the Wabash Railroad Company, filed answers to the complaint. They admit that the rates in question from and to Omaha and South Omaha to and from Texas points are higher for the most part as alleged in the complaint, than those from and to Kansas City and St. Joseph and the other localities named, but aver that those rates from and to Omaha and South Omaha are reasonable in themselves and deny that they are unjustly discriminatory against Omaha and South Omaha in favor of Kansas City or St. Joseph or any of said other localities. As justifying the higher rates between Omaha and South Omaha and Texas points, the greater length of haul (and consequently greater service) from and to Omaha and South Omaha is set up—particularly, as compared with that from and to Kansas City and St. Joseph. It is further claimed that Omaha and South Omaha are not so favorably situated with reference either to “points of production or consumption” as Kansas City, and are not like Kansas City on the direct and natural line or route of traffic between Texas points and Chicago and the east.

It is alleged (answer of the Missouri, Kansas & Texas Railway Company) that the complaint in reference to the rates on glucose to Omaha and on syrup (of which glucose is an ingredient) from Omaha to Texas “is founded primarily on the fact that no glucose is produced at Omaha,” and that “should the rates” (on syrup) “from Omaha to Texas be reduced to the rates obtaining from” points of manufacture of glucose, “Omaha would still be at a disadvantage as compared with” such points of manufacture “to the extent of the freight charges on glucose from those points to Omaha.”

In reference to the allegation, that “jobbers in boots and shoes, hats, caps, dry goods and other merchandise purchased east, ship through Chicago and Mississippi river points to Omaha and in reshipping from Omaha pay Chicago rates from Omaha to Texas,” it is stated (answer of Missouri, Kansas & Texas Railway Company) that on “that particular class of goods, the present rates from Omaha to the most important portion of Texas are the same as from St. Louis, the shipments referred to taking the first class rate, which is alike \$1.30 per 100 lbs. from St. Louis, Omaha and South Omaha, while the rate from Chicago and Peoria is

\$1.50 per 100 lbs.,” but that in any event, “it is unreasonable that on boots, shoes, hats, caps, dry goods and similar merchandise, Omaha should be placed by the railroads in a position to compete with primary markets or points which, by reason of their geographical location, with reference both to the points of production and points of consumption, are so much better adapted to supplying the trade,” and “on any class of goods purchased east of the Mississippi river and handled by jobbers at Mississippi river points, Omaha must necessarily, even with the same rates as apply from the Mississippi river, be at a disadvantage to the extent of the charges from the Mississippi river to Omaha.”

In the matter of rates on packing house products it is stated (answer of the Missouri, Kansas & Texas Railway Company), that those rates “from Kansas City and St. Louis to all Texas points are the same and the rate from Omaha is 7 cts. per 100 lbs. greater;” that “Davenport, Moline, Rock Island, Fort Madison and Keokuk do not produce packing house products and any claim Omaha may have for an equalization of rates with those particular points on the basis of distance should not apply to shipments of packing house products, because there is no movement of those commodities from those cities;” that “*the claim for a lower rate on packing house products seems to be made particularly by reason of competition from Kansas City;*” that Kansas City has “the geographical advantage of Omaha in competition for Texas trade;” that the percentages which the rates from Omaha are of the rates from Kansas City are in no case as great as the percentages which the distances from Omaha to Texas points are of the distances from Kansas City to those points, and that railroads have no “*right to disregard distance and natural advantages in order to bring about a commercial equality*, nor is it just and reasonable that the railroads leading south from Omaha to Texas should be required to equalize conditions at Omaha brought about by the adjustment of cattle rates from points in the west to Omaha and Kansas City, over which those roads to Texas have no control.”

As to the rates on cattle from Texas to Omaha, the answer of the Missouri, Kansas & Texas Railway Company, sets forth that those rates are 5 cts. per 100 lbs. higher than to Kansas City and



this differential "is not incommensurate with the service performed;" that "the Missouri, Kansas & Texas Railway Company reaches Kansas City, but does not extend to Omaha, and in applying a rate of 5 cts. per 100 lbs. greater to Omaha than to Kansas City, it is by reason of the demand of its connecting lines north of Kansas City, obliged, in the protection of said rate, to accept on cattle destined to Omaha *\$20.00 per car less 5 cts. per 100 lbs.* less than it receives on cattle having destination at Kansas City, from the fact that while the differential used in making the rate is 5 cts. per 100 lbs., its said connections refuse to accept 5 cts. per 100 lbs. as a proportion of the through rate, but in all cases demand a minimum of \$20.00 per car."

The Missouri, Kansas & Texas Railway Company also alleges in its answer that "the rates on cotton seed oil and sugar, in carloads, from Texas points to Omaha and South Omaha, as compared with the rates to Kansas City, and which under the present adjustment are 5 cts. per 100 lbs. higher to Omaha and South Omaha, are not disproportioned to service performed to both points" and that, if the rates were made on the basis of distance or "service performed," the excess of the rates to Omaha and South Omaha over those to Kansas City would be greater than it is under existing rates.

There are other allegations of the answers, which we deem it unnecessary to notice here, but which, as far as they are material, will be considered in our statement of facts and conclusions.

The Commercial Club of Kansas City has appeared as an intervenor and filed a printed argument in the interest of that city.

#### FACTS.

1. The complainant is a corporation organized under the laws of the state of Nebraska, composed principally of shippers in Omaha and South Omaha in that state. These two cities are near or adjacent to each other and, as the rates in question to and from both are the same, Omaha will be used hereinafter as designating both Omaha and South Omaha.

2. The defendants are common carriers by rail, engaged as members of continuous through lines and under joint tariffs of

rates in the transportation of interstate traffic, and are subject to the provisions of the "Act to regulate commerce." They constitute lines or parts of lines from one or more of the localities named in the complaint (Omaha, St. Joseph, Kansas City, St. Louis, Hannibal, Ft. Madison, Keokuk, Davenport, Rock Island, Moline, Peoria and Chicago) to points throughout Texas and also from one or more of said localities to the West and Northwest through Pueblo, Colorado Springs, Denver, Cheyenne and other points. Those more or less directly connected with lines of transportation to or in Texas are The Chicago, Rock Island & Pacific Railway Company; The Chicago, Rock Island & Texas Railway Company; The Wabash Railroad Company; The Missouri, Kansas & Texas Railway Company; The Houston & Texas Central Railroad Company; The Missouri Pacific Railway Company; The Texas & Pacific Railway Company; The International and Great Northern Railroad Company; The Atchison, Topeka & Santa Fé Railroad (now Railway) Company; The Gulf, Colorado & Santa Fé Railway Company; The Kansas City, St. Joseph & Council Bluffs Railroad Company; and The Chicago, Burlington & Quincy Railroad Company. Of these, The Chicago, Rock Island & Pacific, The Missouri Pacific, and The Atchison, Topeka & Santa Fé Companies have lines to the West or Northwest, and, also, "The Burlington & Missouri River Railroad Company in Nebraska."

3. The short lines and distances by those lines between the points named in the complaint and a number of the most important inland commercial centers of Texas are given below:

FROM CHICAGO TO TYLER.		MILES.
Chicago to Cairo, Ill. (Illinois Central R. R.).....		365
Cairo to Tyler (St. Louis Southwestern Ry.).....		547
Total.....		912
TO DALLAS.		
Chicago to St. Louis (Chicago & Alton R. R.).....		268
St. Louis to Dallas (St. Louis & San Francisco Ry.).....		683
Total.....		951
Chicago to Kansas City (Atchison System).....		458
Kansas City to Denison (K. C. F. S. & M. and M. K. & T.).....		411
Denison to Dallas (Houston & Texas Central Ry.).....		78
Total.....		947

**COMMERCIAL CLUB OF OMAHA V. CHICAGO, R. I. & P. RY. CO. 655**

**To FORT WORTH.**

Chicago to Kansas City (Atchison System).....	458
Kansas City to Fort Worth (K. C. F. S. & M. and M. K. & T.).....	507
<b>Total.....</b>	<b>965</b>

**To WACO.**

Chicago to St. Louis (Chicago & Alton R. R.).....	288
St. Louis to Texarkana (St. Louis, Iron Mountain & Sn.).....	490
Texarkana to Waco (St. Louis Southwestern Ry.).....	258
<b>Total.....</b>	<b>1081</b>

**To HOUSTON.**

Chicago to St. Louis (Chicago & Alton R. R.).....	288
St. Louis to Texarkana (St. Louis, Iron Mountain & Sn.).....	490
Texarkana to Longview (Texas & Pacific Ry.).....	97
Longview to Houston (International & Great Northern R. R.).....	282
<b>Total.....</b>	<b>1103</b>

**To AUSTIN.**

Chicago to St. Louis (Chicago & Alton R. R.).....	288
St. Louis to Texarkana (St. Louis, Iron Mountain & Sn.).....	490
Texarkana to Longview (Texas & Pacific Ry.).....	97
Longview to Austin (International & Great Northern R. R.).....	262
<b>Total.....</b>	<b>1183</b>

**To SAN ANTONIO.**

Chicago to St. Louis (Chicago & Alton R. R.).....	288
St. Louis to Texarkana (St. Louis, Iron Mountain & Sn.).....	490
Texarkana to Longview (Texas & Pacific Ry.).....	97
Longview to San Antonio (International & Great Northern R. R.).....	843
<b>Total.....</b>	<b>1218</b>

**To PARIS.**

Chicago to St. Louis (Chicago & Alton R. R.).....	288
St. Louis to Paris (St. Louis & San Francisco R. R.).....	584
<b>Total.....</b>	<b>867</b>

**To TAYLOR.**

Chicago to St. Louis (Chicago & Alton R. R.).....	288
St. Louis to Taylor (as below).....	818
<b>Total.....</b>	<b>1096</b>

**To EL PASO.**

Chicago to Kansas City (Atchison System).....	458
Kansas City to Fort Worth (K. C. F. S. & M. and M. K. & T.).....	507
Fort Worth to El Paso (Texas & Pacific Ry.).....	614
<b>Total.....</b>	<b>1579</b>
Distance through <i>via</i> Atchison, Topeka & Santa Fe R. R.....	1630

FROM PEORIA	
TO TYLER.	
	MILES.
Peoria to St. Louis (Chicago, Peoria & St. Louis R. R.).....	188
St. Louis to Texarkana (St. Louis, Iron Mountain & Sn.).....	490
Texarkana to Tyler (St. Louis Southwestern) .....	128
Total.....	801
TO DALLAS.	
Peoria to Hannibal (Chicago, Burlington & Quincy R. R.).....	172
Hannibal to Dallas (Missouri, Kansas & Texas Ry.).....	684
Total.....	856
Via Houston & Texas Central, Denison to Dallas.....	833
TO FORT WORTH.	
Peoria to Hannibal (Chicago, Burlington & Quincy R. R.).....	172
Hannibal to Fort Worth (Missouri, Kansas & Texas Ry.).....	674
Total.....	846
TO WACO.	
Peoria to Hannibal (Chicago, Burlington & Quincy R. R.).....	172
Hannibal to Waco (Missouri, Kansas & Texas Ry.).....	768
Total.....	940
TO HOUSTON.	
Peoria to St. Louis (Chicago, Peoria & St. Louis R. R.).....	188
St. Louis to Texarkana (St. Louis, Iron Mountain & Sn.).....	491
Texarkana to Longview (Texas & Pacific Ry.).....	97
Longview to Houston (International and Great Northern R. R.).....	233
Total.....	1009
TO AUSTIN.	
Peoria to St. Louis (Chicago, Peoria & St. Louis R. R.).....	188
St. Louis to Texarkana (St. Louis, Iron Mountain & Sn.).....	490
Texarkana to Longview (Texas & Pacific Ry.).....	97
Longview to Austin (International & Great Northern R. R.).....	263
Total.....	1038
TO SAN ANTONIO.	
Peoria to St. Louis (Chicago, Peoria & St. Louis R. R.).....	188
St. Louis to Texarkana (St. Louis, Iron Mountain & Sn.).....	490
Texarkana to Longview (Texas & Pacific Ry.).....	97
Longview to San Antonio (International & Gt. Northern).....	343
Total .....	1118
TO PARIS.	
Peoria to St. Louis (Chicago, Peoria & St. Louis R. R.) .....	188
St. Louis to Paris (St. Louis & San Francisco R. R.) .....	584
Total .....	767
TO TAYLOR.	
Peoria to St. Louis (Chicago, Peoria & St. Louis R. R.).....	188
St. Louis to Taylor (as below) .....	813
Total .....	996

**COMMERCIAL CLUB OF OMAHA V. CHICAGO, E. I. & P. RY. CO. 657**

**To EL PASO.**

Peoria to Hannibal (Chicago, Bur. & Quincy R. R.) .....	173
Hannibal to Ft. Worth (Missouri, Kansas & Texas Ry.) .....	674
Ft. Worth to El Paso (Texas & Pacific Ry.) .....	614
<b>Total .....</b>	<b>1460</b>

**FROM DAVENPORT, ROCK ISLAND AND MOLINE**

**To TYLER.**

	<b>MILES.</b>
Davenport to Kansas City (C. R. I. & P., H. & St. Jo.) .....	335
Kansas City to Mineola, Tex. (K. C. F. S. & M., M. K. & T.) .....	514
Mineola to Tyler (International & Gt. Northern R. R.) .....	26
<b>Total .....</b>	<b>875</b>

**To DALLAS.**

Davenport to Kansas City (C. R. I. & P. and H. & St. Jo.) .....	335
Kansas City to Dallas (K. C. F. S. & M. and M. K. & T.) .....	517
<b>Total .....</b>	<b>852</b>
Via Houston & Texas Central from Denison to Dallas .....	819

**To FORT WORTH.**

Davenport to Kansas City (C. R. I. & P. and H. & St. Jo.) .....	335
Kansas City to Fort Worth (K. C. F. S. & M. and M. K. & T.) .....	507
<b>Total .....</b>	<b>842</b>

**To WACO.**

Davenport to Kansas City (C. R. I. & P. and H. & St. Jo.) .....	335
Kansas City to Waco (K. C. F. S. & M. and M. K. & T.) .....	596
<b>Total .....</b>	<b>931</b>

**To HOUSTON**

Davenport to Kansas City (C. R. I. & P. and H. & St. Jo.) .....	335
Kansas City to Houston (K. C. F. S. & M. and M. K. & T.) .....	534
<b>Total ..</b>	<b>1169</b>
Via Houston & Texas Central from Denison .....	1084

**To AUSTIN.**

Davenport to Kansas City (C. R. I. & P. and H. & St. Jo.) .....	335
Kansas City to Taylor, Tex. (K. C. F. S. & M. and M. K. & T.) .....	609
Taylor to Austin (International & Gt. Northern R. R.) .....	86
<b>Total .....</b>	<b>1040</b>

**To SAN ANTONIO.**

Davenport to Kansas City (C. R. I. & P. and H. & St. Jo.) .....	335
Kansas City to Taylor, Tex. (K. C. F. S. & M. and M. K. & T.) .....	609
Taylor to San Antonio (International & Gt. Northern R. R.) .....	117
<b>Total .....</b>	<b>1121</b>

**To TAYLOR.**

Davenport to Kansas City (C. R. I. & P. R. R.) .....	335
Kansas City to Taylor (K. C. F. S. & M. and M. K. & T.) .....	669
<b>Total .....</b>	<b>1004</b>

**TO PARIS.**

Davenport to Kansas City (C. R. I. & P. Ry.).....	81
Kansas City to Carthage, Mo. (Missouri Pacific Ry.).....	150
Carthage to Paris (St. Louis & San Francisco Ry.) .....	833
<b>Total</b> .....	<b>818</b>

**TO EL PASO.**

Davenport to Kansas City (C. R. I. & P. and H. & St. Jo.).....	835
Kansas City to Ft. Worth (K. C. F. S. & M. and M. K. & T.).....	507
Ft. Worth to El Paso (Texas & Pacific) .....	614
<b>Total</b> .....	<b>1456</b>

**FROM HANNIBAL****TO TYLER.**

	<b>MILES.</b>
Hannibal to Mineola, Tex. (Missouri, Kansas & Texas Ry.).....	681
Mineola City to Tyler (International & Gt. Northern R. R.) .....	26
<b>Total</b> .....	<b>707</b>

**TO DALLAS.**

Hannibal to Dallas (Missouri, Kansas & Texas Ry.) .....	684
Hannibal to Denison (Missouri, Kansas & Texas Ry.) .....	578
Denison to Dallas (Houston & Texas Central R.R.).....	78
<b>Total</b> .....	<b>651</b>

**TO FORT WORTH.**

Hannibal to Fort Worth (Missouri, Kansas & Texas Ry.).....	674
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**TO WACO.**

Hannibal to Waco (Missouri, Kansas & Texas Ry.).....	768
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**TO HOUSTON.**

Hannibal to Houston (Missouri, Kansas & Texas Ry.).....	1023
Hannibal to St. Louis (St. Louis, Keokuk & Northwestern).....	120
St. Louis to Texarkana (St. Louis, Iron Mountain & Sn.) .....	490
Texarkana to Longview (Texas & Pacific Ry.).....	97
Longview to Houston (International & Gt. Northern R. R.).....	283
<b>Total</b> .....	<b>933</b>

**TO AUSTIN.**

Hannibal to Taylor (Missouri, Kansas & Texas Ry.).....	886
Taylor to Austin (International & Gt. Northern R. R.).....	86
<b>Total</b> .....	<b>973</b>

**TO SAN ANTONIO.**

Hannibal to Taylor (Missouri, Kansas & Texas Ry.).....	886
Taylor to San Antonio (International & Gt. Northern R. R.).....	117
<b>Total</b> .....	<b>953</b>

**TO PARIS.**

Hannibal to St. Louis (St. Louis, Keokuk & N. W. R. R.) .....	120
St. Louis to Paris (St. Louis & San Francisco R.R.).....	561
<b>Total</b> .....	<b>704</b>

TO TAYLOR.

Hannibal to Taylor (Missouri, Kansas & Texas)..... 886

TO EL PASO.

Hannibal to Ft. Worth (Missouri, Kansas & Texas) ..... 674

Ft. Worth to El Paso (Texas & Pacific)..... 614

Total ..... 1268

FROM KEOKUK TO

Above named Texas points 59 miles greater distance than from Hannibal.

FROM FORT MADISON

TO TYLER.

MILES.

Ft. Madison to Kansas City (Atchison System) ..... 231

Kansas City to Paola, Kas. (K. C. F. S. & M. R. R.)..... 48

Paola to Mineola (Missouri, Kansas & Texas Ry.)..... 471

Mineola to Tyler (International & Gt. Northern R. R.) ..... 26

Total ..... 761

TO DALLAS.

Ft. Madison to Kansas City (Atchison System)..... 231

Kansas City to Paola, Kas. (K. C. F. S. & M. R. R.)..... 48

Paola to Dallas (Missouri, Kansas & Texas Ry.) ..... 474

Total ..... 738

Via Houston & Texas Central R. R. from Denison to Dallas..... 705

TO FORT WORTH.

Ft. Madison to Ft. Worth (Atchison System) ..... 826

Via Kansas City, Ft. Scott & Memphis R. R. and M. K. & T. from Kansas City..... 728

TO WACO.

Ft. Madison to Kansas City (Atchison System)..... 231

Kansas City to Paola, Kas. (K. C. F. S. & M. R. R.)..... 48

Paola to Waco (Missouri, Kansas & Texas Ry.) ..... 558

Total ..... 817

TO HOUSTON.

Ft. Madison to St. Louis (St. Louis, Keokuk & Northwestern)..... 202

St. Louis to Texarkana (St. Louis, Iron Mountain & Sn.)..... 490

Texarkana to Longview (Texas & Pacific Ry.)..... 97

Longview to Houston (International & Great Northern R. R.) ..... 232

Total ..... 1021

Ft. Madison to Kansas City (Atchison System)..... 221

Kansas City to Paola, Kas. (K. C. F. S. & M. R. R.)..... 48

Paola to Denison, Tex. (Missouri, Kansas & Texas Ry.)..... 368

Denison to Houston (Houston & Texas Central R. R.) ..... 388

Total ..... 970

## To AUSTIN.

	MILES.
Ft. Madison to Kansas City (Atchison System).....	231
Kansas City to Paola, Kan. (K. C. F. S. & M. R. R.).....	43
Paola to Taylor (Missouri, Kansas & Texas Ry.).....	626
Taylor to Austin (International & Gt. Northern R. R.).....	86
Total.....	926

## To SAN ANTONIO.

Ft. Madison to Kansas City (Atchison System).....	231
Kansas City to Paola, Kan. (K. C. F. S. & M. R. R.).....	43
Paola to Taylor, Tex. (Missouri, Kansas & Texas Ry.).....	626
Taylor to San Antonio (International & Gt. Northern R. R.).....	117
Total.....	1007

## To PARIS.

Fort Madison to Kansas City (Atchison System).....	231
Kansas City to Paris (as below).....	483
Total.....	704

## To TAYLOR.

Fort Madison to Kansas City (Atchison System).....	231
Kansas City to Taylor (K. C. F. S. & M. and M. K. & T.).....	669
Total.....	890

## To EL PASO.

Ft. Madison to Kansas City (Atchison System).....	231
Kansas City to Ft. Scott (K. C. F. S. & M. and M. K. & T.).....	507
Fort Worth to El Paso (Texas & Pacific Ry.).....	614
Total.....	1342
Distance through <i>via</i> Atchison, Topeka & Santa Fé R. R. ....	1498

FROM ST. LOUIS  
TO TYLER.

	MILES.
St. Louis to Texarkana (St. Louis Iron Mountain & Sn.).....	490
Texarkana to Tyler (St. Louis Southwestern).....	128
Total.....	618

## To DALLAS.

St. Louis to Dallas (St. Louis & San Francisco R. R.).....	633
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## To FORT WORTH.

St. Louis to Texarkana (St. Louis Iron Mountain & Sn.).....	490
Texarkana to Fort Worth (St. Louis Southwestern).....	215
Total.....	705

## To WACO.

St. Louis to Texarkana (St. Louis Iron Mountain & Sn.).....	490
Texarkana to Waco (St. Louis Southwestern).....	258
Total.....	748



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**TO HOUSTON.**

St. Louis to Texarkana (St. Louis Iron Mountain & Sn.).....	490
Texarkana to Longview (Texas & Pacific Ry.).....	97
Longview to Houston (International & Gt. Northern R. R.).....	232
<b>Total.....</b>	<b>819</b>

**TO AUSTIN.**

St. Louis to Texarkana (St. Louis Iron Mountain & Sn.).....	490
Texarkana to Longview (Texas & Pacific Ry.).....	97
Longview to Austin (International & Gt. Northern R. R.).....	263
<b>Total.....</b>	<b>849</b>

**TO SAN ANTONIO.**

St. Louis to Texarkana (St. Louis Iron Mountain & Sn.).....	490
Texarkana to Longview (Texas & Pacific Ry.).....	97
Longview to San Antonio (International & Gt. Northern).....	343
<b>Total.....</b>	<b>930</b>

**TO PARIS.**

St. Louis to Paris (St. Louis & San Francisco R. R.).....	534
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**TO TAYLOR.**

St. Louis to Texarkana (St. Louis Iron Mountain & Sn.).....	490
Texarkana to Longview (Texas & Pacific).....	97
Longview to Taylor (International & Gt. Northern).....	236
<b>Total.....</b>	<b>813</b>

**TO EL PASO.**

St. Louis to Texarkana (St. Louis Iron Mountain & Sn.).....	490
Texarkana to Ft. Worth (St. Louis Southwestern).....	215
Ft. Worth to El Paso (Texas & Pacific).....	614
<b>Total.....</b>	<b>1319</b>
Distance through <i>via</i> Atchison, Topeka & Santa Fé R. R.).....	1490

**FROM KANSAS CITY**

**TO TYLER.**

	<b>MILES.</b>	
Kansas City to Paola (K. C. F. S. & M. R. R.).....	43	
Paola to Mineola, Tex. (Missouri, Kansas & Texas Ry.).....	471	
Mineola to Tyler (International & Gt. Northern R. R.).....	26	
<b>Total.....</b>	<b>540</b>	

**TO DALLAS.**

Kansas City to Paola (K. C. F. S. & M. R. R.).....	43
Paola to Dallas (Missouri, Kansas & Texas Ry.).....	474
<b>Total.....</b>	<b>517</b>

Kansas City to Paola (K. C. F. S. & M. R. R.).....	43
Paola to Denison (Missouri, Kansas & Texas Ry.).....	368
Denison to Dallas (Houston & Texas Central R. R.).....	73
<b>Total.....</b>	<b>484</b>

## TO FORT WORTH.

Kansas City to Paola (K. C. F. S. & M. R. R.).....	43
Paola to Fort Worth (Missouri, Kansas & Texas Ry.) .....	464
Total.....	507

## TO WACO.

Kansas City to Paola (K. C. F. S. & M. R. R.).....	43
Paola to Waco (Missouri, Kansas & Texas Ry.) .....	553
Total.....	596

## TO HOUSTON.

Kansas City to Paola (K. C. F. S. & M. R. R.).....	43
Paola to Houston (Missouri, Kansas & Texas Ry.) .....	791
Total.....	834

Kansas City to Paola (K. C. F. S. & M. R. R.).....	43
Paola to Denison (Missouri, Kansas & Texas Ry.).....	368
Denison to Houston (Houston & Texas Central R. R.).....	338
Total.....	749

## TO AUSTIN.

Kansas City to Paola (K. C. F. S. & M. R. R.).....	43
Paola to Taylor, Tex. (Missouri, Kansas & Texas Ry.).....	626
Taylor to Austin (International & Gt. Northern R. R.).....	36
Total.....	705

## TO SAN ANTONIO.

Kansas City to Paola (K. C. F. S. & M. R. R.).....	43
Paola to Taylor, Tex. (Missouri, Kansas & Texas Ry.) .....	626
Taylor to San Antonio (International & Gt. Northern R. R.).....	117
Total.....	786

## TO PARIS.

Kansas City to Carthage, Mo. (Missouri Pacific Ry.).....	150
Carthage to Paris (St. Louis & San Francisco R. R.).....	333
Total.....	483

## TO TAYLOR.

Kansas City to Paola (Kansas City, Ft. Scott & Memphis).....	43
Paola to Taylor (Missouri, Kansas & Texas).....	626
Total.....	669

## TO EL PASO.

Kansas City to Ft. Worth (K. C. F. S. & M. and M. K. & T. R.).....	507
Fort Worth to El Paso (Texas & Pacific R. R.).....	614
Total.....	1121
Distance through <i>via</i> Atchison, Topeka & Santa Fé R. R.).....	1173

## FROM ST. JOSEPH

## TO

Above Texas points (*via* K. C., St. J. & C. B. R. R.) 63 miles greater distance than from Kansas City.

FROM OMAHA

TO

Above Texas points (*via* K. C., St. Joseph & C. B. R. R.) 195 miles greater distance than from Kansas City.

From these tables, it will be seen, there are a number of roads, which form parts of short lines between the points named in the complaint and Texas points, which are not made parties defendant in this proceeding. Among them are The Illinois Central, The St. Louis South Western, The Chicago & Alton, The St. Louis & San Francisco, The Kansas City, Ft. Scott & Memphis, The St. Louis, Iron Mountain & Southern, The Chicago, Peoria & St. Louis, The Hannibal & St. Joseph and The St. Louis, Keokuk & North Western.

Omaha is not on any of the short or direct lines between Texas points, on the one hand, and Chicago and the Mississippi river points from Davenport to St Louis, on the other hand, but is a considerable distance north of those lines and off the natural and ordinary course of traffic from Chicago and the East to Texas. The short line, for instance, from Chicago *via* Council Bluffs, (practically Omaha), to Ft. Worth is 198 miles longer than that *via* Kansas City. The Chicago, Rock Island & Pacific Railway has an indirect (termed by the witnesses "zig-zig" line) from Omaha *via* Belleville and McFarland to Terral, Indian Territory, where it connects with the Chicago, Rock Island & Texas Railway which runs on to Ft. Worth. The distance from Omaha to Ft. Worth by this line is 762 miles. By the short line *via* the Kansas City, St. Joseph & Council Bluffs road as far as Kansas City, the distance to Fort Worth, as seen from the above tables of distance, is 702 miles. The traffic between Texas points and Omaha appears to go for the most part, if not entirely, over this short line *via* Kansas City. There are two roads which directly connect Kansas City with Texas; The Missouri, Kansas & Texas Railway, and The Atchison, Topeka & Santa Fé Railroad, in connection with the Gulf, Colorado & Santa Fé, which it controls. These have lines extending through Texas to Galveston on the Gulf Coast. The Chicago, Rock Island & Pacific Railway also has a line from Kansas City to Terral, Indian Territory, and thence over the Chicago, Rock Island & Texas Railway into Texas.

4. The defendants are for the most part members of the South Western Traffic Association by which their rates in question and from Texas points are fixed and controlled. The rates fi

Kansas City, St. Joseph and Omaha north to St. Paul, Minneapolis and Duluth are regulated by the Western Freight Association. The Chicago, Rock Island & Pacific, Missouri Pacific and Missouri, Kansas & Texas railway companies are members of both associations. The rates of defendants having lines to the West from Omaha, St. Joseph and Kansas City through Pueblo, Denver, Cheyenne and other western points are, also, fixed and maintained by agreement between them.

The railway companies or associations have established what are termed "Territories" as bases of rate making. All stations in each Territory, without reference to distance, are given the same rate to or from the same Texas points. Of the localities named in the complaint, St. Louis, Hannibal, Keokuk, Ft. Madison, Davenport, Rock Island, and Moline, are grouped together as part of "St. Louis Territory;" Kansas City and St. Joseph, as part of "Kansas City Territory;" and Chicago and Peoria, as part of "Chicago Territory." Omaha is not in any group, but the rates between Omaha and Texas points are based upon the Kansas City territory rates, being certain differentials higher than those rates, with the Chicago territory rates as the maximum limit.

The class rates to a large number of what are termed Texas "*Common Points*" are the same from Omaha as from Chicago territory and the same from Kansas City territory as from St. Louis territory.

Below are given the class rates in cents per hundred lbs. from Omaha and the Territories named to these "Common Points."

CLASS RATES TO TEXAS COMMON POINTS.

CLASSES.	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
From Kansas City & St. Joseph } in Kansas City Territory. } --	130	113	97	90	70	74	65	54	43	36
St. Louis, Hannibal, Ft. Madison, Keokuk, Daven- port, Rock Island, Moline } (in St. Louis Territory.).... }	"	"	"	"	"	"	"	"	"	"
Omaha, .....	150	129	109	100	77	83	73	61	49	41
Chicago & Peoria (in Chicago } Territory.) .....	"	"	"	"	"	"	"	"	"	"
Excess of Omaha rates over Kansas City Territory and St. Louis Territory rates. ....	20	16	12	10	7	9	8	7	6	5

Among the prominent commercial centers to which the above rates apply, are, Marshall, Mineola, Terrell, Hearne, Houston, Galveston, Palestine, Austin and San Antonio.

The Chicago Territory rates are based upon the St. Louis Territory rates, and as the Kansas City Territory rates, upon which the Omaha rates are based, are lower to some common points and to other than "Common Points" than the St. Louis Territory rates, it follows, that to such common points and other points the Omaha rates are to the same extent lower than the Chicago Territory rates. In the following tables are given the rates to a few of such other points:

**TO DENISON, SHERMAN, WICHITA FALLS, DALLAS, FT. WORTH,  
WACO AND TEMPLE.**

CLASSES.	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
From										
St. Louis Territory .....	130	113	97	90	70	74	65	54	43	36
Kansas City Territory .....	110	99	89	83	65	67	60	49	38	31
Omaha .....	130	117	104	96	75	78	70	57	45	38
Chicago Territory .....	150	129	109	100	77	83	73	61	49	41

**TO PARIS.**

From										
St. Louis Territory .....	130	113	97	90	70	74	65	54	43	36
Kansas City Territory .....	120	106	93	86½	67½	70½	62½	51½	40½	33½
Omaha .....	140	124	108	99½	77½	81½	72½	59½	47½	40½
Chicago Territory .....	150	129	109	100	77	83	73	61	49	41

**TO TAYLOR.**

From										
St. Louis Territory .....	130	113	97	90	70	74	65	54	43	36
Kansas City Territory .....	126	110	93	86	67	71	62	52	41	34
Omaha .....	146	128	108	99	77	82	72	60	48	41
Chicago Territory .....	150	129	109	100	77	83	73	61	49	41

To a number of common points and to points other than common points, as above stated, the Kansas City rates are lower than the St. Louis rates and, as appears from the preceding tables, are the following differentials lower than the Omaha rates.

Classes.....	1	2	3	4	5	A	B	C	D	E
Differential.....	20	18	15	13	10	11	10	8	7	7

5. The rates heretofore named are class rates. The "*commodity*" rates between Omaha and Texas points involved in the complaint are the following differentials higher than those between Kansas City and St. Joseph and Texas points.

Packing House Products, southbound.....	7 cts. per 100 lbs.
Cotton Seed Oil, northbound.....	5 cts. per 100 lbs.
Sugar ".....	3 cts. per 100 lbs.
Horses and Mules ".....	5 cts. per 100 lbs.
On other kinds of live stock, differential varies—in no case less than.....	5 cts. per 100 lbs.

The differential on sugar (which when shipped from Texas appears to come principally from Galveston and Sugarland) is stated in the complaint to be 6 cts. per 100 lbs. As seen above it is now 3 cents.

The rate on glucose from Chicago to Omaha is 20 cts. per 100 lbs.; from Peoria to Omaha, 17½ cts. per 100 lbs.; and from Davenport and St. Louis to Omaha, 15 cts. per 100 lbs. The rates in carloads on the manufactured article (syrup) from those cities to Texas points are as follows:

From Chicago and Omaha.....	60 cts. per 100 lbs.
" Peoria.....	60 cts. " "
" Davenport and St. Louis.....	58 cts. " "

6. The short lines from Chicago, Omaha, St. Joseph, Kansas City, and St. Louis, west to Trinidad, Pueblo, Colorado Springs, Denver and Cheyenne and north west to Billings (Montana), are given below:

FROM CHICAGO  
TO CHEYENNE.

	MILWA.
Chicago, Ill. to Omaha, Neb. (Chicago, Milwaukee & St. Paul).....	490
Omaha to Cheyenne, Wyo. (Union Pacific Railway).....	516
Total .....	1006

TO DENVER.

Chicago to Omaha (Chicago, Milwaukee & St. Paul Railway).....	490
Omaha to Denver, Colo. (Burlington & Mo. River R. R.).....	538
Total .....	1028

TO COLORADO SPRINGS.

Chicago to Omaha (Chicago, Milwaukee & St. Paul Ry.).....	490
Omaha to Colorado Springs (Chicago, Rock Island & Pac. R. R.).....	573
Total .....	1063

TO PUEBLO.

Chicago to Pueblo (Atchison, Topeka & Santa Fé R. R.) .....	1063
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TO TRINIDAD.

Chicago to Trinidad (Atchison, Topeka & Santa Fé R. R.)..... 1111

TO BILLINGS, MONT.

Chicago to Omaha (Chicago, Milwaukee & St. Paul Ry.)..... 490

Omaha to Billings (Burlington & Missouri River R. R.)..... 893

Total ..... 1383

FROM OMAHA

TO CHEYENNE, WYO.

Omaha to Cheyenne (Union Pacific Railway) ..... 516

TO DENVER, COLO.

Omaha to Denver (Burlington & Missouri River R. R.)..... 538

TO COLORADO SPRINGS, COLO.

Omaha to Colorado Springs (Chicago, Rock Island & Pac.)..... 573

TO PUEBLO, COLO.

Omaha to Colorado Springs (Chicago, Rock Island & Pac.)..... 573

Colorado Springs to Pueblo (Denver & Rio Grande)..... 45

Total ..... 618

TO TRINIDAD, COLO.

Omaha to Colorado Springs (Chicago, Rock Island & Pac.)..... 573

Colorado Springs to Trinidad (Denver & Rio Grande)..... 185

Total ..... 708

TO BILLINGS, MONT.

Omaha to Billings (Burlington & Missouri River R. R.)..... 893

FROM ST. JOSEPH

TO CHEYENNE, WYO.

St. Joseph to Grand Island (St. Joseph & Grand Island R. R.) ..... <sup>MTLS.</sup> 253

Grand Island to Cheyenne (Union Pacific Railway)..... 363

Total ..... 615

TO DENVER.

St. Joseph to Denver (Burlington System)..... 604

TO COLORADO SPRINGS.

St. Joseph to Colorado Springs (Chicago, Rock Island & P. Ry.)..... 610

TO PUEBLO.

St. Joseph to Colorado Springs (C. R. I. & P. Ry.)..... 610

Colorado Springs to Pueblo (Denver & Rio Grande R. R.)..... 45

Total ..... 655

TO TRINIDAD.

St. Joseph to Trinidad (Atchison System)..... 657

TO BILLINGS.

St. Joseph to Billings (Burlington System)..... 985

## FROM KANSAS CITY

## TO CHEYENNE.

Kansas City to St. Joseph (Kan. City, St. Joe & C. B. R. R.).....	68
St. Joseph to Grand Island (St. Joseph & Grand Island R. R.).....	252
Grand Island to Cheyenne (Union Pacific Railway).....	363
Total .....	678

## TO DENVER.

Kansas City to Denver (Union Pacific Railway).....	639
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## TO COLORADO SPRINGS.

Kansas City to Colorado Springs (Atchison, T. & S. F. R. R.).....	668
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## TO PUEBLO.

Kansas City to Pueblo (Atchison System).....	635
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## TO TRINIDAD.

Kansas City to Trinidad (Atchison System).....	653
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## TO BILLINGS.

Kansas City to Billings (Burlington System).....	1048
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## FROM ST. LOUIS

## TO CHEYENNE.

	MILES.
St. Louis to Omaha (Wabash R. R.).....	413
Omaha to Cheyenne (Union Pacific Railway) .....	516
Total .....	929

## TO DENVER.

St. Louis to Kansas City (Wabash R. R.).....	277
Kansas City to Denver (Union Pacific Railway).....	639
Total .....	916

## TO COLORADO SPRINGS.

St. Louis to Kansas City (Wabash R. R.).....	277
Kansas City to Colorado Springs (Atchison System) .....	668
Total .....	945

## TO PUEBLO.

St. Louis to Kansas City (Wabash R. R.).....	277
Kansas City to Trinidad (Atchison System).....	653
Total .....	930

## TO TRINIDAD.

St. Louis to Kansas City (Wabash R. R.).....	277
Kansas City to Trinidad (Atchison System).....	653
Total .....	930

## TO BILLINGS.

St. Louis to Omaha (Wabash R. R.).....	413
Omaha to Billings (Burlington & Mo. River R. R.).....	893
Total .....	1305



Among the roads composing these short lines, the following are not made parties defendant in this proceeding, to-wit, The Chicago, Milwaukee & St. Paul, The Union Pacific Railway, The Denver & Rio Grande and The St. Joseph & Grand Island Railroad. The Union Pacific Railway is the short line from Omaha to Cheyenne and from Kansas City to Denver and a part of the short lines from Chicago, St. Joseph and Kansas City to Cheyenne and, also, of the lines from St. Louis to Cheyenne and Denver.

The Fremont, Elkhorn & Missouri Valley, The Sioux City & Pacific and The Chicago, St. Paul, Minneapolis & Omaha roads, called the North Western lines, also, are not made parties.

The distances from Omaha are less than those from St. Louis, St. Joseph and Kansas City to all the Western points named in the preceding tables, except Trinidad. The distances from Kansas City exceed those from Omaha, as follows: to Cheyenne, by 162 miles; to Denver, by 101 miles; to Colorado Springs, by 95 miles; to Pueblo, by 17 miles and to Billings by 155 miles. The distance from Chicago in each instance is greater than that from Omaha by 490 miles.

Omaha (as well as Kansas City and St. Joseph) is on one of the natural routes and main trunk lines for the carriage of trans-continental traffic between the West and the East.

The supply of sugar to Missouri River points, including Omaha, St. Joseph and Kansas City, while to some extent obtained from Texas, is procured principally from the "Pacific Slope," and the rates on sugar, cattle and other commodities, and, also, class rates, from the territory west of and embracing Trinidad, Pueblo, Colorado Springs, Denver and Cheyenne, are the same to Omaha, St. Joseph and Kansas City.

7. Chicago, Kansas City, Omaha and St. Louis are the large "packing centers" and take rank in the order in which they are named. The principal cattle producing territories on the southwest are in Texas, west of a line drawn north and south through Ft. Worth and in New Mexico and Arizona, and on the west and northwest, in Colorado, Utah, the Dakotas, Wyoming and Montana. Cattle are also procured from Kansas, Oklahoma, Indian Territory, Northern Nebraska, Idaho, Oregon and Washington. The larger portion of the cattle "packed" at Omaha is from the west and northwest. Kansas City pro-

cures cattle principally on the south and southwest from Kansas, Oklahoma, Indian Territory, Texas, New Mexico and Arizona, and, on the west, from Colorado and Utah. Kansas City is more favorably situated than Omaha with reference to the cattle producing territory on the south and southwest, and Omaha, by the short lines through Pueblo, Colorado Springs, Denver and Cheyenne, is nearer, as before stated, to the territory west of those points and is also more favorably situated than Kansas City with reference to the north and northwest.

The rates on cattle, as before stated, not only from Trinidad, Pueblo, Colorado Springs, Denver and Cheyenne, but, also from territory west of those gateways, are the same to Kansas City, St. Joseph and Omaha. The Union Pacific, after passing west through Cheyenne, has a line from Granger, Wyoming, to the northwest through Idaho, Oregon and Washington, and the rates from stations on that line in those northwestern states are, also, the same to Kansas City and St. Joseph as to Omaha. On the roads to the north of Cheyenne, known as the "North Western Lines," The Fremont, Elkhorn & Missouri Valley and The Burlington & Missouri River, which run from Omaha northwest through Northern Nebraska, Wyoming and Montana, the rates are lower to Omaha than to Kansas City and St. Joseph. The differential in favor of Omaha from stations on the Fremont, Elkhorn & Missouri Valley road appears to be \$20.00 per car, and, on the Burlington & Missouri River road, \$12.00 per car. The rates from the north over the Sioux City and Pacific and the Chicago, St. Paul, Minneapolis & Omaha roads are more favorable to Omaha than to Kansas City. Cattle from the northern part of South Dakota and from North Dakota go mainly to Chicago. From the southwest, on the lines of the Atchison, Topeka & Santa Fé System, from Trinidad to El Paso, Texas, and through New Mexico and Arizona, and from all Southern and Texas points, the rates are lower to Kansas City and St. Joseph than to Omaha. The differential from Texas points, as before stated, varies, but is in no case less than 5 cents per 100 lbs. The rate, for instance, from El Paso, on the extreme western boundary line of Texas, to Kansas City is 57 cents per 100 lbs. and to Omaha 62 cents. The car-loads range, according to length of car, from 19,000 lbs. to 24,000 lbs. The minimum car-load of what

is termed the "standard car" is 19,000 lbs., and on that car load, the differential in favor of Kansas City on shipments from El Paso would be \$9.50. On a "standard car" load from Billings, Montana, in the northwest, to Omaha, the rate is \$88.00, and to Kansas City, \$98.00, the differential in favor of Omaha being \$10.00.

On shipments of cattle from Texas points *via* Kansas City to Omaha, the regular and short line route, the roads north of Kansas City, which continue the transportation from that point on to Omaha, demand \$20.00 per car for that service. As the differential of 5 cents a hundred pounds only amounts to \$9.50 on a minimum carload of 19,000 lbs. and \$12.00 on a maximum carload of 24,000 lbs., the roads south of Kansas City have to "absorb" in their rates to Kansas City the difference between these differentials and the \$20.00 demanded by the roads running from Kansas City to Omaha—in other words, the roads transporting cattle to Kansas City billed and destined to Omaha, would receive in the first instance \$10.50, and in the second, \$8.00 less for the service rendered by them than if the haul terminated at Kansas City.

On shipments of cattle from a large number of points on the Union Pacific road west and northwest of Cheyenne *via* Omaha and Kansas City to Chicago, the rates *via* Kansas City are from \$10.00 to \$15.00 per car higher than *via* Omaha. As a general rule rates from the west through Omaha and Kansas City to Chicago are the same.

The privilege is granted the shipper on most shipments of cattle from the west and the northwest "billed through" to Chicago of "stoppage in transit" at Omaha, St. Joseph, and Kansas City, for the purpose of enabling the shipper to try those intermediate markets, and, if they are not found satisfactory, to reload and reship on to the ultimate market, Chicago, at the balance of the through rate. This privilege is also allowed at Kansas City, St. Joseph and St. Louis on shipments from Texas "billed through" *via* either of those cities to Chicago, but is not granted at Omaha on shipments from Texas *via* that point. The rate on shipments from Texas *via* Omaha to Chicago is made up of a through rate to Omaha—that is, a rate less than the sum of the locals of the members of the through lines to Omaha—and

the local rate from Omaha to Chicago; in other words, there is no through rate, in the ordinary sense, from Texas *via* Omaha to Chicago, and cattle are rarely, if ever, billed through by that route. Shipments of cattle from Texas points *via* Omaha to Chicago would consume from 8 to 12 hours more time than *via* Kansas City. Confinement in cars is injurious to cattle. It results in "shrinkage" in weight, and the longer the confinement the greater the "shrinkage."

8. Omaha packers receive some hogs from western Iowa, but the bulk of their supply comes from Nebraska. From points in the southern half of Nebraska nearer to Omaha than to Kansas City, the rates to Kansas City are as low as those to Omaha. In northern Kansas from points nearer to Kansas City than to Omaha, the rates are higher to Omaha than to Kansas City. There appear to be more competing lines of transportation leading from southern Nebraska and northern Kansas to Kansas City than to Omaha. The transportation of hogs from points in Nebraska to Omaha is wholly *intrastate*.

9. On shipments from Omaha the rates on *packing house products* are the same as those from Kansas City to Trinidad, Pueblo, Colorado Springs, Denver and Cheyenne and points west of those gateways to the Pacific coast, and, also, to points to the northwest in Washington, Oregon and Idaho. The rates from Kansas City are higher than those from Omaha to points in Nebraska and Wyoming on the Fremont, Elkhorn & Missouri Valley road, to points in Montana on the Burlington & Missouri River road and to points in the Dakotas.

#### CONCLUSIONS.

While the testimony in this case and the argument of counsel are devoted largely to rates between the extreme Southwest (New Mexico and Arizona), the West, the Northwest and the North, on the one hand, and Omaha and Kansas City on the other, the only rates in issue under the complaint, or which are specifically complained of as being in violation of law, are those *between Omaha and Texas points*.

It is stated in the printed argument filed by counsel for complainant:

"The complaint charges respondent companies with establishing excessive rates and unjust discrimination against Omaha in the following particulars: (1), in making class rates between Omaha and *Texas points*; (2), in making rates on sugar from *Texas points* to Omaha; (3), in making rates on cattle shipped from *Texas points* to Omaha; (4), in making rates on packing house products between " (from) "Omaha and" (to) "*Texas points*." (Note.—The rates on cotton seed oil from *Texas points* to Omaha are also embraced in the complaint.)

The complaint, it is true, charges that the rates in question are "unreasonable and excessive" as well as "unjustly discriminatory," but the charge insisted upon in argument is, that they are in violation of section 3 of the act to regulate commerce, which, among other things, prohibits rates unduly or unreasonably prejudicial or disadvantageous to one locality and unduly or unreasonably preferential or advantageous to another.

The rates complained of are of two kinds, *commodity* and *class* rates. With respect to the commodity rates between Omaha and *Texas points*, it is claimed on the part of complainant, that they should "not exceed those between Kansas City and *Texas points*," and, as to the class rates between Omaha and *Texas points*, that they should not exceed the class rates between St. Joseph, Kansas City, St. Louis, Hannibal, Keokuk, Ft. Madison, Davenport, Rock Island and Moline, and *Texas points*.

1. We will first consider the charge, that the commodity rates between Omaha and *Texas points* are unduly preferential to Kansas City and unduly prejudicial to Omaha, and the contention, upon which the charge is predicated, namely, that those rates should not exceed the rates between Kansas City and *Texas points*.

The ten *Texas* cities named in the tables of distances by short lines to *Texas points* given in our statement of facts, embrace commercial centers located on or near the northern, southern, eastern and western boundaries and throughout the most thickly populated and highly improved portions of the State. The short lines to and from Omaha are *via* Kansas City and are in each instance 195 miles longer to Omaha than to Kansas City. (They are 126 miles longer to Omaha than to St. Joseph, that city being 69 miles north of Kansas City.) It was testified at the hearing by the General Manager of the Union Stock Yards at Omaha, a witness

for the complainant, that "the rate to Kansas City is reasonable," and, as stated by him, "no question of that is made." If the rate to Kansas City is only reasonable, the charge of the same rate for the continuation of the haul 195 miles further on to Omaha would make no allowance for the expense and value of that additional service. It would be rendering this service without compensation and the demand of the complainant is, in effect, that it be required to be so rendered.

This demand is placed upon the ground, that the rates over the lines from the West through Pueblo, Colorado Springs, Denver and Cheyenne, and over the Union Pacific railway from the Northwest through Cheyenne, are the same to Kansas City as to Omaha, although the distances to Omaha are less than those to Kansas City. As shown in the tables of distances in our statement of facts, the distances by short lines to Omaha are less than those to Kansas City, as follows: from Cheyenne by 162 miles, from Denver by 101 miles, from Colorado Springs by 95 miles, and from Pueblo by 17 miles. Because these differences in distance are ignored in making rates to Omaha and Kansas City by the lines through these gateways from the West and Northwest, it is claimed that the same course should be pursued by the lines between Texas points and those cities, and that because it is not, the higher rates between Omaha and Texas points than between Kansas City and Texas points are "unjustly discriminatory" and unlawful. This claim is based upon two assumptions: *first*, that making the same rates to Omaha and Kansas City from the West and Northwest *via* the cities named, regardless of the differences in distance, is lawful, and, *second*, this being so, that the circumstances and conditions are the same or substantially the same in that case as in the case of transportation between Kansas City and Omaha, respectively, and Texas points.

The general rule is, as laid down in the answer of the Missouri, Kansas & Texas Railway Company, namely, that carriers have no "right to disregard distance and natural advantages in order to bring about a commercial equality." This is in accordance with the uniform ruling of this Commission. In *McMorran v. Grand Trunk R. Co.* 3 I. C. C. Rep. 252, 2 Inters. Com. Rep. 604, it was held that,

"Due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges."

And in the *Freight Bureau of the Cincinnati Chamber of Commerce v. Cincinnati, N. O. & T. P. R. Co.* 6 I. C. C. Rep. 195, 4 Inters. Com. Rep. 592, it is said:

"It is not the duty of carriers, nor is it proper, that they undertake by adjustment of rates or otherwise to impair or neutralize the natural commercial advantages resulting from location or other favorable condition of one territory in order to put another territory on an equal footing with it in a common market. Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages. *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744; *Raworth v. Northern Pac. R. Co.* 3 Inters. Com. Rep. 857, 5 I. C. C. Rep. 234; *Eau Claire Board of Trade v. Chicago, M. & St. P. R. Co.* 4 Inters. Com. Rep. 65, 5 I. C. C. Rep. 264; *Chamber of Commerce of Minneapolis v. Great Northern R. Co.* 4 Inters. Com. Rep. 230, 5 I. C. C. Rep. 571. If this result in prejudice to one and advantage to another, it is not the undue prejudice or advantage forbidden by the statute, but flows naturally from conditions beyond the legitimate sphere of legal or other regulation."

Omaha and Kansas City are gateways on the Missouri River through which traffic naturally flows between the West and the East. They are on different Trunk lines which are practically parallel from Cheyenne, Denver, Colorado Springs and Pueblo as far as Omaha and Kansas City, and which compete for the business to Missouri and Mississippi River points, Chicago and the East. The transportation from the West through Pueblo, Colorado Springs, Denver and Cheyenne and from the northwest through Cheyenne is not via Kansas City to Omaha as is the case in transportation from Texas points to Omaha, and Omaha is not on the direct and natural course of traffic from Texas points to the Mississippi River, Chicago and the East. The circumstances and conditions in the two cases are, therefore, not substantially similar, and, if the practice of ignoring distance in the one (to the extent shown) is lawful—a question upon which we express no opinion—it furnishes no warrant for a like practice in the other.

What we have said above as to the contention that Omaha should have the same rates on commodities from Texas points as Kansas City because Kansas City has the same rates from the West and parts of the Northwest as Omaha, applies to rates on

shipments of packing-house products *south bound* from Omaha to Texas points as well as to rates on shipments of live stock, cotton seed oil and sugar *north bound* from Texas points to Omaha. The differential on sugar in favor of Kansas City is stated in the complaint to be 6 cts. per 100 lbs., but it is now, as appears from our statement of facts, 3 cts. per 100 lbs. Cotton seed oil is not shipped from the West or Northwest and, therefore, the reasoning of complainant does not apply to it.

The complainant further contends that a "spirit of discrimination and determination to give Kansas City and St. Joseph an undue preference and advantage" over Omaha are exhibited not only by roads from the West and through Cheyenne from the Northwest in making the rates to Omaha as high as those to Kansas City, but also by the roads running through Northern Nebraska and north of Cheyenne into Wyoming and Montana, and by the roads to the Dakotas and Minnesota, in that, while their cattle rates to, and packing-house-product rates from, Omaha, are lower than the rates on those commodities to and from Kansas City, they do not favor Omaha to the extent the rates on the roads from the territory (Arizona and New Mexico) southwest from Trinidad and from Texas, Indian Territory, Oklahoma and Kansas, favor Kansas City. This, as matter of fact, is disputed by counsel for respondents. Instances are given on both sides, which, it is claimed, show favoritism in the one case to Kansas City and in the other to Omaha. It is unnecessary to go into an analysis of the rates involved in this controversy, as the rates from and to other than Texas points are not in issue in this proceeding and the main lines and roads to the West, Northwest and North of Omaha are not made parties defendant. Conceding the contention of complainant to be well founded in fact, it is manifest, if it constitutes any ground of complaint, that it should be made against those lines and roads, which, it is claimed, although leading from and to territories nearer to Omaha than to Kansas City, favor Kansas City in their rates to a greater extent than the roads leading from and to territory nearer to Kansas City than to Omaha favor Omaha.

In connection with the commodity rates on cattle may be considered the charge in the complaint, that shippers from Texas "are not quoted rates" (cattle) "to Chicago through South Omaha



that can be used," while "they are quoted through rates to Chicago *via* St. Joseph or Kansas City." Through rates are matters of contract between carriers composing through lines and "no power existed at common law and none is given by the Act to regulate commerce to court or Commission to compel connecting companies to contract with each other or to unite in a joint tariff." *Chicago & N. W. R. Co. v. Osborne*, 52 Fed. Rep. 912, 4 Inters. Com. Rep. 257. Even if it was a matter within the discretion and authority of the Commission, carriers should not, as a general rule, be required to make through rates over indirect routes or routes which are comparatively impracticable for the transportation of the traffic to which the rates are to be applied. Cattle are not "billed" and shipped from Texas *via* Omaha to Chicago, because Omaha is off the direct and natural line of transit. Omaha and Kansas City being about the same distance from Chicago, the route *via* Omaha is about 195 miles (the distance from Kansas City to Omaha) longer than the route *via* Kansas City, and on a shipment *via* Omaha from eight to ten hours more time would be required than on a shipment *via* Kansas City. Time is a matter of the first importance in the transportation of cattle, as "shrinkage" and injury to health result from prolonged confinement.

The charge was made at the hearing and urged in argument, but not set forth in the complaint, that Omaha is unjustly discriminated against because on shipments of cattle from Texas to Chicago under a through bill of lading and a through rate, the privilege of "stoppage in transit" or unloading and trying the intermediate market and, if that is not found satisfactory, of re-loading and shipping on to Chicago at the balance of the through rate, is allowed at Kansas City and St. Joseph on such shipments *via* those cities, but is not permitted at Omaha in case shipments are made *via* Omaha. This privilege of "stoppage in transit" is analogous in character to that of "milling in transit" and the question as to its lawfulness is one of difficulty and importance. As it is not put in issue in the pleadings, we cannot authoritatively determine it in this case, and deem it our duty to refrain from any expressions of opinion until the question is regularly raised and fully discussed in all its bearings. It may be said, however, that, if the privilege be lawful, the granting of it to one locality and denial of it to another under substantially simi-

lar circumstances, would be an unjust discrimination against the latter.

Among the "examples" given in the complaint, illustrating, as claimed by the complainant, the advantages in rates enjoyed by Kansas City over Omaha, and to which a large amount of the testimony and argument is devoted, are the rates on hogs from Southern Nebraska to Omaha and Kansas City. These rates, it is alleged, are the same to those cities "from the best hog-raising sections in Nebraska," although the distances to Omaha are materially less than to Kansas City. On the other hand from Kansas, where the situation as to distance is reversed, the rates to Omaha, it is said, are higher than to Kansas City. The rates to Omaha are not complained of as being excessive but it is claimed that the rates from Nebraska to Kansas City are too low, and the secretary of the complainant, who made affidavit to the complaint and was also examined as a witness for complainant, stated at the hearing, "We want rates *raised* from Southern Nebraska points to Kansas City. Except on local business, they are charging too cheap for the distance." The General Manager of the Union Stock Yards at Omaha, a witness for complainant, said "*We would not ask a reduction in rates*" (to Omaha), "but that an adjustment might be made advancing Kansas City rates." There is nothing indicating that the Kansas City rates are unreasonably low except the fact, as it is claimed, that they are lower in proportion to distances than the Omaha rates. This, in itself, is as conclusive proof that the Omaha rates are too high as that the Kansas City rates are too low. If, moreover, the proof were sufficient to authorize our finding that the Kansas City rates are unreasonably low, we have held that that fact does not render them "illegal in a sense that will authorize the Commission to prohibit their being made." In *Re Chicago, St. P. & K. C. R. Co.* 2 I. C. C. Rep. 231, 2 Inters. Com. Rep. 137. The rates to Kansas City and Omaha, respectively, are for the most part, if not entirely, over different lines of carriers, and are for transportation in different directions. The rates from Kansas to Omaha, which are larger for the greater distance to Omaha than the rates for the shorter distance from Kansas to Kansas City are not open to exception on that account.

The contention of the complainant as to the rates on syrup

manufactured of glucose, from Omaha and from Chicago, Peoria and Davenport to Texas, and as to the rate from Omaha to Texas on "boots, shoes, hats, caps, dry goods and other merchandise purchased east" will be considered in connection with *class* rates from those points.

2. With respect to *class* rates between Omaha and Texas points, as we have seen, it is claimed on the part of complainant, that they should not exceed the class rates between St. Joseph, Kansas City, St. Louis, Hannibal, Keokuk, Ft. Madison, Davenport, Rock Island and Moline, and Texas points.

As a basis for fixing class rates to and from Texas points, the roads, as stated in our findings of facts, have established certain territories; Kansas City and St. Joseph being placed in what is termed "Kansas City Territory," and given the same rates, and the other cities above named—St. Louis, Hannibal, Keokuk, Ft. Madison, Davenport, Rock Island and Moline—being placed in what is termed "St. Louis Territory" and given the same rates.

What we have said in the preceding subdivision of this opinion as to according to Omaha the same rates on *commodities*, to and from Texas points as are established for the first two of the above cities, to wit, Kansas City and St. Joseph, applies equally to class rates, and it follows that Omaha is not entitled to the same class rates to and from Texas points as are given Kansas City and St. Joseph—the haul to or from Omaha by the short lines being *via* Kansas City and 195 miles longer than the haul to or from Kansas City and 126 miles longer than the haul to or from St. Joseph.

As to the cities in "St. Louis Territory," to wit, St. Louis, Hannibal, Keokuk, Ft. Madison, Davenport, Rock Island and Moline, it will be seen from the tables of short lines in our statement of facts, that St. Louis is for the most part a materially shorter distance point from the Texas cities named in those tables than Omaha; that Hannibal is the shorter distance point by 28 miles than Omaha from all except Paris; that Keokuk is the longer distance point in most cases by 31 miles; that Ft. Madison is the longer distance point from all by 26 miles; and *that Davenport, Rock Island and Moline* (which are located near each other) *are the longer distance points in every instance by 140 miles.*

The claim of the complainant, that the class rates between Omaha and Texas points should not exceed those between the last named three cities—Davenport, Rock Island and Moline—to and from which the haul is 140 miles longer than to and from Omaha, is not without foundation and must be sustained. The materially shorter distance to and from Omaha would, other things being equal, entitle that city to proportionately lower rates than are given those points. The principal dissimilarity of circumstance and condition attending the transportation in the two cases is the fact, that Davenport, Rock Island and Moline are on the more direct route of traffic between Texas, on the one hand, and Chicago, and the East, on the other. Due allowance will, in our opinion, be made for any existing dissimilarity by ignoring the advantage possessed by Omaha of being the shorter distance point by 140 miles and giving Omaha rates not higher than those fixed for Davenport, Rock Island and Moline.

Davenport, Rock Island and Moline are Mississippi River points and they have the same rates as St. Louis and other Mississippi River points in "St. Louis Territory." Giving Omaha rates not higher than those of Davenport, Rock Island and Moline, will, therefore, place Omaha on the same footing as St. Louis. If this results in injustice to St. Louis, as the rates to that city are not in issue in this proceeding, it is left to the roads to so readjust those rates as to obviate such injustice. The claim on the part of the roads, that, because they are all Mississippi River points, the same rates must be given Davenport, Rock Island and Moline as are given St. Louis, although the former cities are over two hundred miles north of the latter, gives countenance to a like claim on the part of Omaha, that, because they are both Missouri River points, Omaha, although 195 miles north of Kansas City, is entitled to the same rates as Kansas City.

It appears from the tables of rates heretofore given, that as to most of what are termed "Texas Common points" the Kansas City and "Kansas City Territory" rates are as high as the St. Louis and "St. Louis Territory" rates; that as to some "Common points" and all other than "Common points," the Kansas City and "Kansas City Territory" rates are lower than the St. Louis and "St. Louis Territory" rates. As the Omaha rates are based on the Kansas City rates, it results, under the differentials in

force, that with respect to those points as to which the Kansas City rates are as high as the St. Louis rates, the Omaha rates are as high as the Chicago rates—notwithstanding the fact, that by the short lines set forth in our statement of facts Chicago is the longer distance point than Omaha in most instances by over 200 miles.

It also results that in those cases where the "Kansas City Territory" rates are the same as the "St. Louis Territory" rates, the giving to Omaha of rates not higher than those of Davenport, Rock Island and Moline ("St. Louis Territory" points), will be according to Omaha rates not higher than the Kansas City rates.

No reason is assigned, and we can conceive of none, for the distinction made in giving "Kansas City Territory" points as high rates as "St. Louis Territory" points in the instances named and lower rates in others. This distinction, it will be observed, is not made with respect to "St. Louis Territory points." Their rates appear to be the same for the most part to "Common points" and to other than "Common points."

While we are not advised why Kansas City class rates are in any instance made as high as St. Louis territory rates and it is clear that Omaha rates should in all cases be higher than those of Kansas City, yet as the Kansas City as well as the St. Louis territory rates, are not in issue in this proceeding and there is no evidence bearing upon their reasonableness in themselves or relatively, no order will be made in respect to them. For the present, the matter of their readjustment in accordance with what may appear to be consistent and lawful, will be left to the carriers interested.

Our conclusion is that the maxima class rates given Omaha should *not* be as high as the Chicago rates and that they should in no case exceed those fixed for Davenport, Rock Island and Moline.

It follows from what we have said as to class rates, that the rate on syrup from Omaha should not exceed that from Davenport. "Boots, shoes, hats, caps and dry goods purchased East" are Class 1 traffic. The Class 1 rate from Omaha to Denison, Sherman, Wichita Falls, Dallas, Ft. Worth, Waco and Temple is now the same as that from Davenport, Rock Island and Moline.

Under our conclusion above stated, the rate on this class from Omaha will in no instance be in excess of the rate from the latter points.

An order will issue in accordance with our views herein set forth.

# INDEX.

## ACTION OR SUIT.

1. The proper remedy, where the record of proceedings before the Interstate Commerce Commission by shippers of oil in accordance with a previous order of the Commission does not enable the Commission to determine whether any of the claims are supported by facts which would bring them within the terms of the order, is by proceeding in the courts under the Act to Regulate Commerce, § 16. *Independent Ref. Asso. v. Pennsylvania R. Co.* 449.

2. Shippers whose claims for reparation for damages for wrongful charges for transportation of oil are covered by an order of the Interstate Commerce Commission, but who have not been served in the reparation proceedings before the Commission, may, upon failure of the carriers to properly refund excessive charges, proceed on the basis of reparation prescribed on such order to enforce their claims in the courts as provided by law. *Independent Ref. Asso. v. Western N. Y. & P. R. Co.* 378.

3. Not all the carriers over any particular route need be before the Interstate Commerce Commission to enable it to direct reparation for wrongs inflicted on shippers by an enforced payment of excessive transportation charges, under the Act to Regulate Commerce, § 8, making carriers individually liable for the full amount of damages sustained thereby. *Independent Ref. Asso. v. Western N. Y. & P. R. Co.* 378.

4. One or more of several connecting carriers need not be made parties to a proceeding before the Interstate Commerce Commission against another connecting carrier for unlawful discrimination in rates between places wholly on its own line as compared with the through rate over the connecting lines. *Daniels v. Chicago, R. I. & P. R. Co.* 458.

5. Complaining parties are not bound to include as defendants in proceedings before the Interstate Commerce Commission all carriers maintaining the rates or indulging in the practices complained of, but may proceed against the particular carrier whose line is used by them. *Page v. Delaware, L. & W. R. Co.* 548.

## ACT TO REGULATE COMMERCE.

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As to discrimination and excessive charges under. *Cordale Machine Shop v. Louisville & N. R. Co.* 361.

Relief from operation of fourth section. *Re Rome, W. & O. R. Co.* 323.

*Re Cincinnati, H. & D. R. Co.* 323.

*Re Fremont, E. & M. V. R. Co.* 393.

*Colorado Fuel & I. Co. v. Southern P. Co.* 433.

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As to combination of carriers. *Duncan v. Atchison, T. & S. F. R. Co.* 35.

*Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 195.

**CONSTRUCTION OF SIXTH SECTION.**

As to publishing rates. *Phelps v. Texas & P. R. Co.* 36.

**CONSTRUCTION OF SEVENTH SECTION.**

As to combination of carriers. *Troy Bd. of Trade v. Alabama M. R. Co.* 1.

**CONSTRUCTION OF EIGHTH SECTION.**

*Independent Ref. Asso. v. Western N. Y. & P. R. Co.* 373.

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*Truck Farmers' Asso. v. Northeastern R. Co.* 295.

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**CARLOADS.**

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*Duncan v. Atchison, T. & S. F. R. Co.* 85.

*Behlmer v. Memphis & C. R. Co.* 257.

See also CARRIERS, under heading as to Carload rates.

**CARRIERS.** See also ACTION OR SUIT, 2, 3; EVIDENCE, 1; INTERSTATE COMMERCE COMMISSION, 3, 11, 12; RECEIVERS, 1.**RATE SHEET OR TARIFF.**

1. The rate which carriers are required by the Act to Regulate Commerce, § 6, to publish, file, and adhere to without deviation, cover not merely the carriage, but services rendered in receiving and delivering property as well. *Phelps v. Texas & P. R. Co.* 36.

2. The mere designation, in a paper or circular, of the means of arriving at rates by calculation or reference to other papers, does not constitute the rate sheet required to be published and filed by the Act to Regulate Commerce, § 6. *Colorado Fuel & I. Co. v. Southern P. Co.* 488.

3. The reissuing by a carrier of a tariff of another line, and, by a supplement

concurrently issued, limiting its use of the rates therein prescribed to such as are over a specified minimum, is reprehensible. *Id.*

#### REASONABLENESS OF RATES.

4. That railroad investments may be as secure as other property, the reasonable rates should be liberal until earnings are sufficiently large for a fair return on actual expenditure. *Newland v. Northern P. R. Co.* 181.

5. The agreed rental cannot be accepted as the amount which leased property, part of a system, must earn and the lessee may retain before any reduction can be made in the rates over the leased lines. *Id.*

6. The value of the goods, the cost of the services, and the degree of risk to the carrier, among other considerations, have an important bearing on the relation of the rates on different kinds of traffic, as well as the reasonableness of a rate on a specified article. *Colorado Fuel & I. Co. v. Southern P. Co.* 488.

7. The terms "reasonable and just," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," as used in the Act to Regulate Commerce, imply comparison, and rates must bear just relation to each other as well as be reasonable *per se*, in order to be lawful. *Daniels v. Chicago, R. I. & P. R. Co.* 458; *Pugs v. Delaware, L. & W. R. Co.* 548.

8. Where the reasonableness of rates is in question, comparison thereof may be made, not only with rates on another line of the same carrier, but also with those on the lines of other and distinct carriers. *Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 195; *Morrell v. Union P. R. Co.* 121.

9. The fact that a rate in one direction is materially higher than that in the opposite direction does not, as in case of hauls over the same line in the same direction, establish *prima facie* the unreasonableness of the higher rate. This is especially true where the hauls are of great length. *Duncan v. Atchison, T. & S. F. R. Co.* 85.

10. The fact that different rates and classifications are in force in different sections of the country will not of itself, without proof of unlawful discrimination or disadvantage or of unreasonably high rates, warrant an extension of the lower rate and classification to the section where the higher rate and classification are applied. *F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co.* 61.

11. Rates maintained and which may be reasonable under the conditions existing in one section or part of the country afford no safe criterion by which to measure reasonable charges in other localities, where the expense of operating a road and other conditions affecting transportation are widely different. *Morrell v. Union P. R. Co.* 121.

12. The rates charged on "household goods" will not be declared unlawful on the mere fact that as a condition of granting them the defendants required the shipper to release all claim for damages in case of loss to the amount of \$5 per hundred lbs., or \$1,000 per carload of 20,000 lbs., there being no proof showing that such rates are unreasonable in view of said limitation. *Duncan v. Atchison, T. & S. F. R. Co.* 85.

13. No departure from the rule requiring rates in all cases to be reasonable in themselves can be justified on the ground that it is necessary in order to

maintain existing trade relations, or to "protect competing markets," or to "equalize commercial conditions," or to secure to carriers traffic from certain territory assumed to be exclusively theirs. *Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 195.

14. The financial necessities and conditions of a carrier should be given proper weight in fixing rates, but are not controlling to the extent that, independent of other circumstances, any rates are reasonable until the earnings are sufficient to operate the road and meet all the obligations of the carrier. *Jerome Hill Cotton Co. v. Missouri, K. & T. R. Co.* 601.

15. Rates on shipments of strawberries and vegetables from Charleston to Jersey City are prima facie excessive where the carrier has previously charged the same rates for a series of years for similar shipments from the same place to New York by way of Jersey City. *Truck Farmers' Assn. v. Northeastern R. Co.* 295.

16. Where the roads and branches of two companies extend to and penetrate a wheat producing district, from which they make a joint rate for distances of 480 miles, and each company makes the same rate separately from the same district, one for distances of 450 and the other for distances of 650 miles over their respective lines to the same destination, the rates so jointly and separately made must be held excessive for a shorter distance of 311 miles over a less expensive route, from the same district to the same destination. *Newland v. Northern P. R. Co.* 181.

17. A charge of 70 and 80 cents per 100 pounds on cotton from a given point is unreasonable where the carrier charges only 75 cents for a distance from 400 to 600 miles longer, and has long had in force rates of 60 and 65 cents from the former point when the value of cotton was higher and its transportation more expensive, and other roads in the same territory have much longer hauls for similar rates. *Jerome Hill Cotton Co. v. Missouri, K. & T. R. Co.* 601.

#### CLASSIFICATION AND RELATIVE RATES.

18. Cost of service is only one of the elements to be considered in determining proper classification and relative rates for different articles. *F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co.* 61.

19. The elements of bulk, weight, value, and character of commodities are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification. *Page v. Delaware, L. & W. R. Co.* 548.

20. Carriers who have uniformly placed in the same class all grades of a particular commodity, regardless of the difference in value between different grades, will not incur greater risks by continuing the same practice under an order of the Interstate Commerce Commission requiring a lower classification and rating for the great bulk of shipments of such commodity which are actually transported. *Id.*

21. A charge of a higher tariff rate to designated points on "box shooks" made from an inferior grade of lumber than on lumber, laths, and shingles to the same places, is unjustified and excessive, where these products are classed together and carried at the same rate to other points. *Michigan Box Co. v. Flint & P. M. R. Co.* 335.

22. The rate on cabbages shipped in standard barrels or barrel crates should not exceed three fourths the rate on potatoes shipped in the same manner, where the cabbages do not weigh more than three fourths as much as potatoes and are not worth more than half as much. *Truck Farmers' Asso. v. Northeastern R. Co.* 295.

28. While the difference in cost to the carrier in transporting cereal products and flour is not in itself sufficient to warrant a higher classification upon cereal products, the facts that these products range higher in value than flour, while in the matter of volume of traffic afforded there is a very wide difference in favor of flour, are some of the conditions compelling a low rate upon flour which do not apply in the transportation of cereal products. *F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co.* 61.

#### MOTIVE OF SHIPPER.

24. Unless within the authorized exceptions to the general rule of the statute, discriminations in charges upon like shipments of the same commodities, based solely upon the purpose or "business motive" of the shipper, are unlawful, whether affected directly or indirectly by methods of classification. *Dunoon v. Atchison, T. & S. F. R. Co.* 85.

#### CARLOAD RATES.

25. The difference between the rate on carloads and that on less than carloads must be reasonable. *Id.*

26. A mixed carload rate for cereal products or for cereal products and flour, that would have the effect of throwing out of the trade many competitors of complainant who manufacture only certain kinds of cereal products, and of centralizing the business in the hands of one or more dealers, should not be granted when, without it, no wrong is done to any one and the market is open to all competitors. *F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co.* 61.

#### DISTRICT RATES.

27. The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances, and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial. *Newland v. Northern P. R. Co.* 181; *Evans v. Union P. R. Co.* 590.

#### INCIDENTAL AND TERMINAL CHARGES.

28. Ice and the facilities for its transportation in connection with the transportation of perishable traffic requiring refrigeration in transit undertaken by a carrier are incidental to such transportation, and the charge therefor is within the Act to Regulate Commerce, § 1, requiring reasonableness in all charges for any service in the transportation of passengers or property, or "in connection therewith." *Truck Farmers' Asso. v. Northeastern R. Co.* 295.

29. In computing the total cost of transportation to New York on shipments of strawberries and vegetables from Charleston, where complaint is made that the carrier's rates are exorbitant, the expense of carriage from the terminus of the railway line in Jersey City, by which route the shipment was made, is to be added to the rate charged to that point. *Id.*

**GUARANTY TO CARRIER.**

80. A guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, cannot be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made. *Phelps v. Texas & P. R. Co.* 36.

**REDUCTION OF RATES.**

81. When an article of traffic does not move on account of burdensome rates, and the carrier is hauling a considerable number of empty cars in the direction such article would naturally move if accorded a lower rate, the carrier may be justified in carrying at a rate sufficient to induce the movement of such traffic, provided no extra or additional charge is in consequence put upon other articles carried; but the fact that freight will furnish return loads for empty cars is not a reason for the reduction of rates on such freight, when it does not appear that the rates are unreasonable. *F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co.* 61.

**MISLEADING RATE.**

82. Two west-bound carload rates from Mississippi River points to Pacific Coast terminals on goods termed "Emigrants' Movables" (including "household goods") — one a general class rate; and the other designated a "commodity" rate and less than the general rate, being published as open to "intending settlers only," but in practice given to shippers indiscriminately, and not apparently unreasonable in itself — are improper, as their retention can only serve to mislead the public and afford opportunity for the practice of favoritism and unjust discrimination as between shippers; and the rate should not be in excess of the amount of said commodity rate. *Duncan v. Atchison, T. & S. F. R. Co.* 85.

**THROUGH ROUTES AND RATES.**

83. The successive receipt and forwarding in ordinary course of business, by two or more carriers, of interstate traffic shipped under through bills for continuous carriage over their lines, is assent to a "common arrangement" for such carriage within the meaning of the Act to Regulate Commerce, without previous express agreement between them. *Troy Bd. of Trade v. Alabama M. R. Co.* 1.

84. Through rates are matters of contract between carriers composing the through lines, and connecting carriers cannot be compelled by the Interstate Commerce Commission to contract with each other. *Commercial Club v. Chicago, R. I. & P. R. Co.* 647.

85. The requirement of the agreement of a railway and steamship association that its members apply "full local rates upon all traffic subject to the association agreement coming from or going to" connecting lines which do not maintain association rates, while to traffic from other connecting lines conforming to such rates full local rates are not applied, is repugnant to that clause of the Act to Regulate Commerce, § 8, which forbids carriers to "discriminate in their rates and charges between connecting lines." *Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 195.

36. The practice of making through rates on continuous shipments by combination of charges separately established for distinct services is unjust. *Re Alleged Unlawful Transportation Charges*, 624.

37. A local rate which presumably is adopted as covering both the initial and final expense of a local haul is prima facie excessive as part of a through rate over a through line composed of two or more carriers. *Troy Bd. of Trade v. Alabama M. R. Co.* 1.

38. Although the share which a carrier receives out of a through rate over a line of which its road is a part is not necessarily the measure of reasonable rates by such carrier for a similar length of haul over its own road, the aggregate through rate in force over such line may properly be used as a basis of comparison in determining the legality of rates charged by such carrier over its own road. *Daniels v. Chicago, R. I. & P. R. Co.* 458.

39. The proportion received by some of the connecting carriers out of a long distance through rate is not necessarily the measure of the through rate which such carriers are entitled to make over a materially shorter distance, although such proportion is an important consideration in determining the rightful relation of the two through rates. *Colorado Fuel & I. Co. v. Southern P. Co.* 468.

40. Carriers cannot charge through rates on traffic over a line formed by connection of two or more roads, which, as a whole, are less than the rates in force on similar traffic carried under similar conditions in the same direction over either road. *Daniels v. Chicago, R. I. & P. R. Co.* 458.

41. Although one of two connecting carriers may lawfully accept less for its compensation on a shipment over both roads than for local delivery to the point at the end of its line, a charge of more than twice as much in the latter case is exorbitant. *Cordale Machine Shop v. Louisville & N. R. Co.* 361.

42. The continuity of the carriage of freight over a line formed by two or more roads is not broken in fact and cannot be broken in law by the charge of a local rate by one or more of such roads as its proportion of the through rate. *Troy Bd. of Trade v. Alabama M. R. Co.* 1.

43. The mere fact that one of several connecting carriers receives a share of the total through charges equal to its individual established rates between the points covered by its road is insufficient to make such shipments purely local, and relieves it from liability to make reparation for illegality in such charges, but they must be treated as through shipments unless they are local in all essential respects. *Independent Ref. Assn. v. Western N. Y. & P. R. Co.* 378.

44. Where a contract is made with a shipper by a carrier, member of a through line, for shipment of goods over the line at a less than the published lawful rate charged shippers in general, it is not a violation of the Act to Regulate Commerce within the jurisdiction of the Interstate Commerce Commission for the delivering carrier to exact payment of the full lawful rate before delivery, although if the shipper was an innocent party he might be entitled to his goods on payment of the contract rate. *Duncan v. Atchison, T. & S. F. R. Co.* 85.

45. Connecting carriers which make a through route and establish through rates which apply as single charges for the whole service must be prepared to furnish suitable "instrumentalities of shipment and carriage" as required

by the Act to Regulate Commerce, so that the transportation may be conducted without wrong or injustice to those desiring to use the through line. *Independent Ref. Asso. v. Western N. Y. & P. R. Co.* 378.

#### DISCRIMINATION BETWEEN SHIPPERS.

46. The magnitude of a shipper's enterprise, the number of persons for whom it produces employment and support, the developing results of its business upon the natural resources of the state, the impracticability of moving its plant to other localities, and the fact that it produces material largely used on railroads for construction or repair, do not entitle it to different consideration in respect to rates than individuals and small concerns should receive. *Colorado Fuel & I. Co. v. Southern P. Co.* 488.

47. A party to an interstate shipment cannot be excluded by the carrier from privileges afforded to other patrons in the same locality because of his refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should accompany the demand. *Phelps v. Texas & P. R. Co.* 86.

#### DISCRIMINATION BETWEEN LOCALITIES.

48. The fact that one city is much larger and has more important and extensive business interests than another, and has been treated by the carriers in making rates to surrounding points as a "trade center," is no justification for a continuation of discriminatory rates in favor of such city. *Troy Bd. of Trade v. Alabama M. R. Co.* 1.

49. The granting to one locality and denying to another, under substantially similar circumstances, of the privilege of stoppage in transit at an intermediate point in cases of shipment under a through bill of lading for a through rate to try the market, and of reshipping to the original destination at the balance of the through rate if the market is unsatisfactory, is an unjust discrimination against the second place. *Commercial Club v. Chicago, R. I. & P. R. Co.* 647.

50. The practice, if lawful, of giving to one city on shipments from one direction rates not higher than on similar shipments to a nearer point, furnishes no warrant for giving the latter place rates no higher than those to the former from points in another direction much nearer the latter place, where the circumstances and conditions in the two cases are essentially dissimilar. *Id.*

51. The interstate commerce law is violated and its penalties incurred where rates are relatively unjust so that undue preference is afforded to one locality or undue prejudice results to another, although the higher rate is not in itself excessive, — especially where a given relation in rates which has been long continued and is conceded to be equitable is suddenly reversed merely because other carriers to the longer distance point have disregarded their legal duties. *Lynchburg Bd. of Trade v. Old Dominion S. S. Co.* 632.

52. Rates for the transportation of iron and steel articles from one place to another so great as to prohibit the movement of such articles is unreasonable and unjust, where much lower rates to the latter place from other and far more distant points than the former prevail on such traffic, and the carrier's cost of transportation is much less in the former case than in the latter. *Colorado Fuel & I. Co. v. Southern P. Co.* 488.

53. Inequality in treatment of shippers and localities is indefensible where it has no other justification than the diversion by the carrier of through traffic

from a shorter route over which it participates in carriage, so as to secure for itself greater aggregate revenue through a long haul by a different route, over which it is also engaged in transportation. *Id.*

54. Unreasonable disparity of the aggregate rates on hauls of different lengths to a common destination, whether by one carrier or by several jointly, is unlawful where it results in undue advantage to one locality or business or disadvantage to another. *Id.*

55. The nearer of two competing points cannot justly be denied at least equal rates with the more remote, in fixing reasonable rates for shipment, where neither the cost, the value of the service, nor other conditions of transportation favor the latter. *Hill v. Nashville, C. & St. L. R. Co.* 343.

56. That one town is able, under existing rates to and from such town, to compete with an adjacent town on practically even charges for the aggregate in and out transportation is no excuse for injustice in the rates to the former town as compared with the latter. *Daniels v. Chicago, R. I. & P. R. Co.* 458.

57. The only practicable remedy where carriers have maintained, for a considerable period, a relation of rates affecting an extensive territory somewhat more favorable to one community as compared with another than is justified, is by reducing the rates to the latter community. *Id.*

58. Carriers have no right to disregard distance and natural advantages for the purpose of bringing about commercial equality. *Commercial Club v. Chicago, R. I. & P. R. Co.* 647.

59. Excess of manufacturing costs to a shipper at one point over that of its competitors in other localities will not be considered in ascertaining the rightful relative adjustment of rates between the different places. *Colorado Fuel & I. Co. v. Southern P. Co.* 488.

60. A system of rate-making under which a comparatively few places arbitrarily selected are designated competitive points and given preferential rates, while adjacent points are classed as local and made to pay much higher rates, violates the equality provisions of the Act to Regulate Commerce, including those requiring all rates to be reasonable and just. *Hill v. Nashville, C. & St. L. R. Co.* 343.

#### LONG AND SHORT HAULS.

61. Rates for the transportation of specified articles from a given point to another point in a different state, which are higher than rates on the same articles from the same point of shipment to a more distant point, violate the provision of the Act to Regulate Commerce requiring reasonable and just transportation charges, and forbidding undue or unreasonable prejudice or disadvantage to any locality in any respect whatsoever. *Johnston-Larimer Dry Goods Co. v. Atchison, T. & S. F. R. Co.* 568.

62. A charge by carriers which form an indirect line over which they transport freight, of greater compensation in the aggregate for a shorter than for a longer distance which, includes the shorter is unlawful and in conflict with the Act to Regulate Commerce, § 4, even though a more direct line is formed and used for transportation by which the mileage to the longer-distance point by the indirect line is less than that to the shorter-distance point. *Hill v. Nashville, C. & St. L. R. Co.* 343.



63. A carrier is not justified, under the Act to Regulate Commerce, § 4, in charging more for a shorter than for a longer distance by competition at the longer-distance point of other carriers which are themselves subject to such Act, in the absence of authority from the Interstate Commerce Commission under the proviso of such section. *Lynchburg Bd. of Trade v. Old Dominion S. S. Co.* 633.

64. The competition of markets or the competition of carrying lines subject to regulation under the Act to Regulate Commerce does not justify carriers in making greater short-haul or lower long-haul charges over the same line in the same direction (the shorter being included within the longer distance), in the absence of an order of relief issued by the Commission upon application therefor and after investigation. *Behlmer v. Memphis & C. R. Co.* 257.

65. Carriers operating shorter lines between given points cannot, although they have the advantage in making rates and in carrying under them, dictate a system of charges which the operators of long lines cannot change as to their own roads, and the latter cannot justify greater charges for shorter distances on the ground that they must conform to such system in order to get business on such longer line. *Ordele Machine Shop v. Louisville & N. R. Co.* 361.

66. Any dissimilarity of circumstances resulting from a carrier which has fixed a rate of charges from two designated points on uncompressed cotton only with "option of compression *en route*," availing itself of such option and carrying cotton from the shorter-distance point to the longer-distance point for compression, does not take the traffic out of the general rule of the Act to Regulate Commerce forbidding a greater charge for a shorter distance. *Jerome Hill Cotton Co. v. Missouri, K. & T. R. Co.* 601.

#### RELIEF FROM OPERATION OF SECTION FOUR.

67. The Interstate Commerce Commission may, under the proviso of the Act to Regulate Commerce, § 4, determine, in the exercise of a reasonable and lawful discretion, the description or exceptional character of the "special cases" in which such Commission may, after investigation, authorize common carriers to charge less for longer than for shorter distances, and the extent to which they may be relieved from the operation of such section. *Re Cincinnati, H. & D. R. Co.* 323.

68. No general rule can be laid down to guide the Interstate Commerce Commission in determining whether such a "special case" exists within the proviso of the Act to Regulate Commerce, § 4, as will authorize the Commission in its discretion to permit a common carrier to charge less for longer than for shorter distances for the transportation of passengers or property. *Re Cincinnati, H. & D. R. Co.* 323.

69. A temporary order of relief was granted upon an application by carriers to be relieved from the operation of the Act to Regulate Commerce, § 4, as to the transportation of grain and feed over their lines, so as to charge less for certain longer than for shorter distances, on the ground that through failure of crops the people of such longer distance localities were in a measure destitute and without necessary food for themselves and animals. *Re Fremont, E. & M. V. R. Co.* 293.

70. A common carrier which has established a reasonable excursion rate to

the World's Fair from designated points may be relieved from the operation of the Act to Regulate Commerce, § 4, so as to charge a less amount from a longer-distance point without reducing the rate from the shorter-distance point, where the reduced amount is necessary to enable such carrier to compete with other roads, on the ground that the use of all routes of transportation is necessary for the safety and convenience of visitors. *Re Rome, W. & O. R. Co.* 328.

ESTIMATED WEIGHTS.

71. A practice of billing cotton at a proper estimated weight per bale should not be deemed unlawful when actual weights of shipments cannot be ascertained without great inconvenience to the shipper or carrier, and when transportation charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee. *Phelps v. Texas & P. R. Co.* 86.

#### SHIPPERS' PACKAGES.

72. A shipper should not be subjected to unnecessary restrictions as to the kind of case or package he should use. *Rhode Island Egg & B. Co. v. Lake Shore & M. S. R. Co.* 176.

73. A rate which may be reasonable when applied to the transportation of egg cases as a disconnected service may be unreasonable if the carriage of returned cases at favorable rates is in fact a special service, the discontinuance of which would unduly burden the business of shipping eggs to points of sale. *Id.*

74. Where oil is transported by the carrier both in barrels and tank cars, but the use of the tank cars is practically limited to one class of shippers, the charge for the barrel package in barrel shipments, in the absence of a corresponding charge on tank shipments, resulting in a greater cost of transportation to the shipper in barrels on like quantities of oil between like points of shipments and destination than to the tank shipper, is a discrimination against the former in favor of the latter for which no legal justification has been shown in these cases. *Independent Ref. Asso. v. Pennsylvania R. Co.* 53.

75. A common carrier which charges for carrying barrel packages of oil when the use of tank cars for such shipment has not been open to shippers impartially, in consequence of which they have been deprived of the use of such cars, will be required to refund the amount received for the transportation of the barrels. *Independent Ref. Asso. v. Western N. Y. & P. R. Co.* 378.

#### LIABILITY TO SHIPPER.

76. When the refund of an excessive charge by a carrier has been unnecessarily delayed for a considerable period, the officials responsible therefor become fairly chargeable with wilful intention to violate the law. *Phelps v. Texas & P. R. Co.* 86.

77. A carrier subject to the provisions of the Act to Regulate Commerce cannot by leasing its road free itself from liability for practices made illegal by such act; nor can it, after resuming operation of its property pending proceedings against it to enforce the provisions violated and to recover damages for such violations, claim exemption from liability during the existence of the lease. *Independent Ref. Asso. v. Western N. Y. & P. R. Co.* 378.

78. Whether the shipper or the consignees paid wrongful transportation

charges is immaterial in a proceeding by the shippers to recover the same, where the wrong resulted from unequal conditions of carriage and shipment imposed by the carriers, and the movement of the property depended on the shippers' acceptance of such conditions, of which they were notified in advance, and the cost of transportation was borne by them. *Id.*

79. Initial carriers who fail to furnish impartially to shippers tank cars for oil, in consequence of which the latter are required to ship oil in barrels, are severally liable for the damages resulting therefrom, under the Act to Regulate Commerce, § 8, providing that "any common carrier" subject to the provisions of such act shall be liable for the "full amount" of damages caused by its violation of the provisions of such act. *Id.*

80. Railway companies which enter into an association to control traffic to a common market, and maintain rates higher than are reasonable, unjustly prejudicial, and preferential, if not jointly liable, are at least severally liable. *Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 195.

#### PASSENGERS.

81. A carrier is not compelled to give special excursion rates to one political convention because it has given them to a similar convention of another political party on another date. *Cator v. Southern P. Co.* 118.

82. A proceeding by a minister of religion for unjust discrimination in the allowance of reduced rates to ministers will be dismissed where complainant fails to show that he had made proper application for the reduced rate, producing credentials showing that he was a minister, or that such an application would have been refused by the carrier. *Emerson v. Chicago, R. I. & P. R. Co.* 289.

#### ROUTES.

83. It is the right of shippers to have their goods carried, and the duty of common carriers to receive and forward freight, by the least expensive routes at reasonable through rates. *Newland v. Northern P. R. Co.* 181.

84. A carrier which sends freight over its own line, which is much longer and more expensive to operate than another route over continuous lines operated in part by other common carriers with which it exchanges traffic, can charge only a rate which is reasonable for transportation by the shorter and less expensive route. *Id.*

#### DIVISION OF TERRITORY.

85. Division of territory between lines to a common market is without warrant in law when made for the benefit of the carrier without regard to the interest of shippers in the territory so divided to whom it is in effect a denial of the privilege of shipping their goods or produce to market by the line or route they may prefer. *Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 195.

#### POOLING.

86. The "fines" or "penalties" imposed by the provisions of the agreement of the Southern Railway & Steamship Association on members for violation of association rules appear on the face of that agreement to be available as substitutes for payment which would be exacted under a regular pooling system, and the arrangement under which they are imposed is tantamount to a combine

tion, contract, or agreement " for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof," which are forbidden by the statute. *Id.*

#### CARS.

Mileage for. *Truck Farmers' Assn. v. Northeastern R. Co.* 295.

Hauling empty. *F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co.* 61.

Fitness of. *Truck Farmers' Assn. v. Northeastern R. Co.* 295.

1. Ownership of a car rented to a carrier and for the use of which the carrier pays a full consideration does not of itself entitle the owner to the exclusive use of such car; and if the owner may, in the contract of hire to the carrier, stipulate for the exclusive use of the car, it must be upon such terms as shall not constitute an unjust discrimination against shippers of like traffic in cars owned by the carrier and who are excluded from the use of the car so hired. *Independent Ref. Assn. v. Pennsylvania R. Co.* 53.

2. The time for placing grab irons and drawbars of a standard height, on freight cars, as required by the Act of Congress of March 2, 1893, was extended from July 1, 1895, to specified later dates. *Re Safety of Employees and Travelers.* 382.

#### CASES AND PACKAGES.

Used by shippers, see CARRIERS, under heading as to *Shippers' packages.*

#### CASES CITED AND AFFIRMED.

*Atlanta & W. P. R. Co. Re.* 2 Inters. Com. Rep. 463, 464, 470-472, 480, 3 I. C. C. Rep. 24, 25, 46-49, 75. — cited on pp. 270, 356, 374.

*Bates v. Pennsylvania R. Co.* 2 Inters. Com. Rep. 719, 3 I. C. C. Rep. 447, — cited on p. 73.

*Board of Trade of Troy v. Alabama M. R. Co.* 4 Inters. Com. Rep. 348, 6 I. C. C. Rep. 1. — cited on pp. 48, 352.

*Boards of Trade Union v. Chicago, M. & St. P. R. Co.* 1 Inters. Com. Rep. 608, 1 I. C. C. Rep. 215. — cited on pp. 477, 557.

*Boston & A. R. Co. v. Boston & L. R. Co.* 1 Inters. Com. Rep. 571, 1 I. C. C. Rep. 158. — cited on p. 476.

*Boston Fruit & P. Exch. v. New York & N. E. R. Co.* 3 Inters. Com. Rep. 493, 4 I. C. C. Rep. 664. — cited on p. 48.

*Brady v. Pennsylvania R. Co.* 2 Inters. Com. Rep. 78, 2 I. C. C. Rep. 181, — cited on p. 22.

*Chamber of Commerce of Minneapolis v. Great Northern R. Co.* 4 Inters. Com. Rep. 230, 5 I. C. C. Rep. 571, — cited on pp. 245, 480, 675.

*Chattanooga Board of Trade v. East Tennessee, V. & G. R. Co.* 4 Inters. Com. Rep. 213, 5 I. C. C. Rep. 546. — cited on pp. 363, 364.

*Chicago, St. P. & K. C. R. Co. Re.* 2 I. C. C. Rep. 231, 2 Inters. Com. Rep. 137, — cited on p. 678.

*Cordele Machine Shop v. Louisville & N. R. Co.* 6 I. C. C. Rep. 361, — cited on p. 355.

*Core v. Lehigh Valley R. Co.* 3 Inters. Com. Rep. 460, 4 I. C. C. Rep. 555, 559, — cited on pp. 67, 331, 554.

- Eau Claire Board of Trade v. Chicago, M. & St. P. R. Co.* 4 Inters. Com. Rep. 65, 5 I. C. C. Rep. 264, — cited on pp. 245, 477, 480, 557, 675.
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- Interstate Commerce Commission v. Texas & P. R. Co.* 4 Inters. Com. Rep. 406, 57 Fed. Rep. 243, — cited on p. 557.
- James v. Canadian Pac. R. Co.* 4 Inters. Com. Rep. 374, 5 I. C. C. Rep. 612, — cited on pp. 480, 557.
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*Raymond v. Chicago, M. & St. P. R. Co.* 1 Inters. Com. Rep. 627, 1 I. C. C. Rep. 230,— cited on pp. 477, 557.

*Riddle, Dean, & Co. v. Pittsburgh & L. E. R. Co.* 1 Inters. Com. Rep. 773, 1 I. C. C. Rep. 490,— cited on p. 56.

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*Thurber v. New York Cent. & E. R. R. Co.* 2 Inters. Com. Rep. 743, 3 I. C. C. Rep. 473,— cited on p. 109.

*Trammell v. Clyde S. S. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324,— cited on pp. 233, 645.

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#### DISTANCE.

Effect of, on rates. *Commercial Club v. Chicago, R. I. & P. R. Co.* 647.

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#### EMPTY CARS.

*F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co.* 61.

1. A showing of substantial similarity in transportation conditions is necessary to make the rates of carriers in one section of the country proper standards of comparison in a case of alleged unjust and unreasonable charges in another section. *Evans v. Union P. R. Co.* 530.

2. When a proportion of a through rate for part of a through haul is greatly disproportionate to the balance of the through rate, the burden is on the carrier to make proof of justifying circumstances and conditions. *Troy Bd. of Trade v. Alabama M. R. Co.* 1.

EXCESSIVE RATES. See CARRIERS, under heading as to *Reasonableness of rates*.

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In rates. *Phelps v. Texas & P. R. Co.* 36.

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Rates on. *F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co.* 61.

**HOUSEHOLD GOODS.**

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For perishable traffic. *Truck Farmers' Asso. v. Northeastern R. Co.* 295.

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**INSTRUMENTALITIES.**

Duty of connecting carriers as to. *Independent Ref. Asso. v. Western N. Y. & P. R. Co.* 378.

**INTERSTATE COMMERCE COMMISSION.**

For jurisdiction over receiver, see RECEIVERS.

See also ACTION OR SUIT, 2-5; CARRIERS, 34; RECEIVERS, 3, 8.

Power as to through rate. *Independent Ref. Asso. v. Pennsylvania R. Co.* 53.

Power to compel connecting carriers to interchange business. *Commercial Club v. Chicago, R. I. & P. R. Co.* 647.

1. The Interstate Commerce Commission is authorized and required by the Act to Regulate Commerce to determine in appropriate proceedings whether the rates or practices of carriers complained of are unlawful, and if so, to what extent, and to require such carriers by suitable order to cease from doing what

is ascertained to be unlawful, and also from omitting to do that which is found to be lawful. *Page v. Delaware, L. & W. R. Co.* 548.

2. The Interstate Commerce Commission should, where the rates to a complaining town are asserted to be unjust on the ground that more favorable charges are allowed a competing locality, investigate the facts and circumstances affecting the transportation, and order such readjustment as seems to be required. *Daniels v. Chicago, R. I. & P. R. Co.* 458.

3. An order by the Interstate Commerce Commission requiring specified carriers to desist from charging more than third-class rates for the transportation of window shades will, upon a rehearing after a refusal of the Federal court to enforce such order, on the sole ground that it applied to shades having a very high value as well as to cheaper varieties, be vacated and a new order entered with the same general requirement, but with a proviso permitting such carriers to restrict their transportation of shades at third-class rates to those limited to a specified maximum valuation. *Page v. Delaware, L. & W. R. Co.* 548.

4. No order will be entered at the time by the Interstate Commerce Commission in an investigation instituted by it on its own motion upon a complaint against a given railroad company, where it manifests a disposition to remove just cause of complaint by materially reducing the rates of freight complained of, although it appears that there should be a further revision as to certain points. *Re Alleged Unlawful Transportation Charges*, 634.

#### ISSUES AND DEFENSES.

5. Matter which is not expressly in issue by the pleadings or necessarily involved in issues presented in a strictly *inter partes* case instituted by complaint before the Interstate Commerce Commission cannot be authoritatively determined by it. *Commercial Club v. Chicago, R. I. & P. R. Co.* 647.

6. Where a complainant has invoked the aid of the law to secure what he, with the acquiescence of the carrier had previously obtained in apparent contravention of law, the carrier cannot plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainants be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. *Page v. Delaware, L. & W. R. Co.* 148.

#### STAY.

7. Proceedings before the Interstate Commerce Commission against common carriers for discriminations and preferences will be stayed until final determination by the courts in suits pending therein for the enforcement of an order of the Commission, compliance with which by carriers operating in the territory will remove the discriminations and preferences complained of. *Southern Paint & G. Co. v. Lake Erie & W. R. Co.* 384.

#### REOPENING OR AMENDMENT.

8. The Interstate Commerce Commission is not precluded from rehearing a particular case and modifying its original order therein, by refusal of a Federal court to embrace such order against the carriers affected thereby,—especially when the reasons assigned for such refusal do not relate to the principal ques-

tion in controversy, and are consistent with an approval of the modified order. *Page v. Delaware, L. & W. R. Co.* 548.

9. A case before the Interstate Commerce Commission will not be reopened in a supplementary proceeding brought simply to secure reparation, for the purpose of ruling on questions not decided in the original case, where the petition for reparation was not filed until long after the original decision had been rendered and the offending carrier had complied therewith. *Rice v. Western N. Y. & P. R. Co.* 455.

10. A final order by the Interstate Commerce Commission promptly obeyed by the carrier will not be amended, several years after its rendition, as to reparation for damages resulting from unlawful practices, so as to subject the carrier to further requirements in favor of the complainants. *Id.*

Amendment of order by, see also *Page v. Delaware, L. & W. R. Co.* 548.

#### APPLICATIONS FOR RELIEF UNDER SECTION FOUR.

11. An offer by carriers in a proceeding against them before the Interstate Commerce Commission, to reduce rates complained of provided the Commission will relieve them from the operation of the Act to Regulate Commerce, § 4, by granting an order permitting such reduced rates to be less than the charges of such carriers to intermediate points, is not an application for an order of relief from the operation of such section. *Colorado Fuel & I. Co. v. Southern P. Co.* 488.

12. Competition by a carrier subject to the Act to Regulate Commerce and all matters relative thereto may be presented to the Interstate Commerce Commission for determination upon application of defendant carriers for relief from the operation of § 4, under the proviso contained therein. *McClelen v. Southern R. Co.* 588.

#### IRON.

Rates on. *Colorado Fuel & I. Co. v. Southern P. Co.* 488.

*Cordale Machine Shop v. Louisville & N. R. Co.* 361.

#### ISSUES.

In case before Commission. *Commercial Club v. Chicago, R. I. & P. R. Co.* 647.

#### JOINT RATES.

Reasonableness of. *Daniels v. Chicago, R. I. & P. R. Co.* 488.

See also CARRIERS, under headings as to *Reasonableness of rates and Through routes and rates.*

#### JUDGMENT.

No order in respect to excessive charges by railroad companies on certain products is necessary where, after the commencement of the action and before its decision, the rate is reduced to that asked by the complainant. *Michigan Box Co. v. Flint & P. M. R. Co.* 335.

#### LATHS.

Rates on. *Michigan Box Co. v. Flint & P. M. R. Co.* 335.

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Of railroad as affecting carrier's liability. *Independent Ref. Assn. v. Western N. Y. & P. R. Co.* 878.

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To complain against receiver. *Evans v. Union P. R. Co.* 530.

**LIEN.**

Of carriers upon freight. *Phelps v. Texas & P. R. Co.* 36.

**LINE.**

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See also **ROUTE**.

**LOCAL RATES.**

As part of through rate. *Troy Bd. of Trade v. Alabama M. R. Co.* 1.

**LOCAL SHIPMENTS.**

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*Re Cincinnati, H. & D. R. Co.* 323.

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As to connecting carriers. *Bohlmer v. Memphis & O. R. Co.* 257.

Effect of dissimilar conditions. *Jerome Hill Cotton Co. v. Missouri, K. & T. R. Co.* 601.

Unjust discrimination or undue preference in. *McClelen v. Southern R. Co.* 588.

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**MILEAGE RATE.**

*Troy Bd. of Trade v. Alabama M. R. Co.* 1.

Discrimination as to. *Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 195.

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Rates for. *Johnston-Larimer Dry Goods Co. v. Atchison, T. & S. F. R. Co.* 503.

**MOTIVE.**

Of shipper as affecting rate. *Duncan v. Atchison, T. & S. F. R. Co.* 85.

**OATMEAL.**

Rates on. *F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co.* 61.

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Charge for barrels. *Independent Ref. Asso. v. Pennsylvania R. Co.* 53.

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**PEASE.**

Rates on. *Truck Farmers' Asso. v. Northeastern R. Co.* 295.

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*Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 195.

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